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AMERICAN GOVERNMENT



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# AMERICAN GOVERNMENT

FOR USE IN SECONDARY SCHOOLS

REVISED AND REWRITTEN

BY

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"AMERICAN HISTORY," ETC.

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## PREFACE

IN most secondary schools the time devoted to the study of American government is so limited that especial care is necessary in selecting the topics to be considered and the methods to be used. The chief aim in studying our governments is unquestionably the preparation of our high school students for the proper exercise of their duties and privileges as American citizens. In the opinion of the author, this preparation must include at least three things. First of all, the pupils must gain an adequate knowledge of the structure and functions of our system of government. In the second place, they should be to some extent familiar with the affairs of to-day which are connected with the work of government, in order that our political system may become real, and not be a lifeless organization to be studied chiefly in books. Last, but perhaps most important from the standpoint of life as well as the school, some training must be given which will enable the pupils to look upon both sides of public questions, to weigh arguments, and to judge for themselves whether reasons given for a particular policy may be satisfactory. This training of the judgment in connection with practical subjects must not lead the pupils to imagine that they are solving or can solve the problems of government, but should enable them to learn and understand the truth about each one which they consider.

In rewriting the book the author has placed much more emphasis upon the activities of government than in the

earlier work. This has made it necessary to change the arrangement of many topics and chapters, as activities have been grouped according to their relations with one another rather than connected with the governmental officials through whom a special phase of the work may be performed. It is hoped that the introduction of new material, the shifting of emphasis still further to the more practical features of our government's work, and the new special helps for students will make the text even more acceptable than the original *American Government*.

The author acknowledges with great pleasure the many helpful suggestions made by teachers and friends. Corrections of errors will be received gladly from those who have occasion to use the volume.

PASADENA, CALIFORNIA,  
*May, 1909.*



## SUGGESTIONS

MANY teachers may prefer to study the parts of the book in an order different from that in which they are now arranged. Although the author advises that the present arrangement be followed, little difficulty will probably be found in studying Part II before Part I, though it is probably more difficult. The author has found it advisable to make a careful examination of the written Constitution of the United States in connection with the work of the Constitutional Convention, Chapter XV. The pupils can then distinguish much more easily between the constitutional and the extra-constitutional features of our national government. This distinction ought to be understood on all important subjects, but should not be over-emphasized.

When classes devote a year to American history and government, all authorities agree that the two should be correlated as far as possible. Under ordinary conditions, however, naturally the major part of the work in civics would follow the regular course in history. It therefore may be necessary to study the text-book on government as a whole after the historical discussions have been completed. In this part of the class work the historical facts can be reviewed to advantage, and at the same time used to illustrate the topics of the text. Such a correlation of the two subjects will make both of them more vital and interesting.

As stated in the preface, no course in American government can be satisfactory which does not give opportunities to investigate the actual work of government in its many practical phases. For this investigation, many of the

"Questions" at the ends of the chapters can probably be used to advantage. Every pupil ought to do some additional outside work every month, in order to gain skill in discriminating between important and unimportant facts, in making notes, and in formulating reports. With this end in view the marginal references and those under the head of "Studies" at the ends of the chapters have been selected carefully from books and magazines that are easily accessible. It will probably be possible, also, for each pupil to prepare a more formal paper or give an extended oral report upon one of the "Topics."

Much can be done in the class room in studying constitutions, charters, sample ballots, and other papers almost as useful which can be obtained at but slight expense. Interest may be quickened by holding a legislative session, at which bills are presented, debated, and brought to a vote. Trials with a judge, jury, attorneys, and witnesses may be possible by a little extra preparation and help from outside, if necessary.

The following suggestions may be given for the school library. This should have several copies of the state constitution and of the city charter, if the school is located in a city. A recent copy of the *Congressional Directory* and some good newspaper almanac for the current year are essential. No library should be without several copies of Bryce's *The American Commonwealth*, abridged edition, nor Hart's *Actual Government*; Hinsdale's *The American Government*, and the author's *American Federal State* will undoubtedly be found helpful. The Century series of eight volumes entitled "The American State," edited by Wilmoughby, are exceedingly valuable. Some good text-book upon the government of the State in which the class resides is almost indispensable. Those recently published in Macmillan's *Handbooks of American Government* series are excellent. In fact, if there is no text-book of this character, the author would suggest that a copy of Morey's *The Govern-*

*ment of New York* be purchased, unless the institutions of the State are much more like those described in one of the other volumes of that series. Many exceedingly useful government publications can be obtained gratis through application to the congressman from the district or from the bureau by which they are published. They may be purchased also from the Superintendent of Documents in Washington at a low cost. Among the many other books that might be mentioned, *The New Encyclopedia of Social Reform*, Schouler's *Constitutional Studies*, Harrison's *This Country of Ours*, and Wilson's *The State* are particularly recommended. If the classes are at all large, several copies of some of these books may be necessary.

For other suggestions upon methods and material, the student may use to advantage Hart's *Actual Government* or Hart's *Manual of American History, Diplomacy, and Government*, or the author's *American Federal State*. The guides to periodical literature are indispensable for reference to recent magazine articles.



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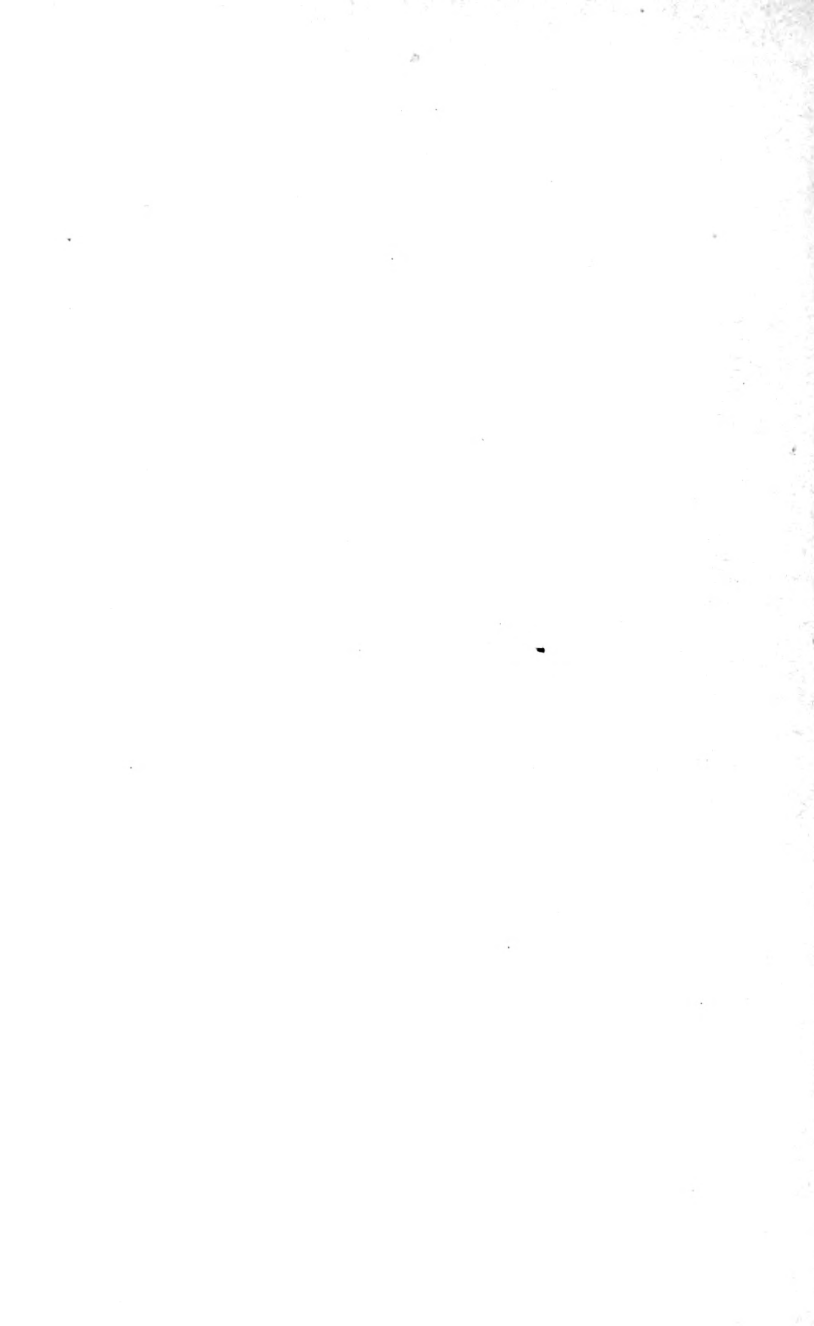
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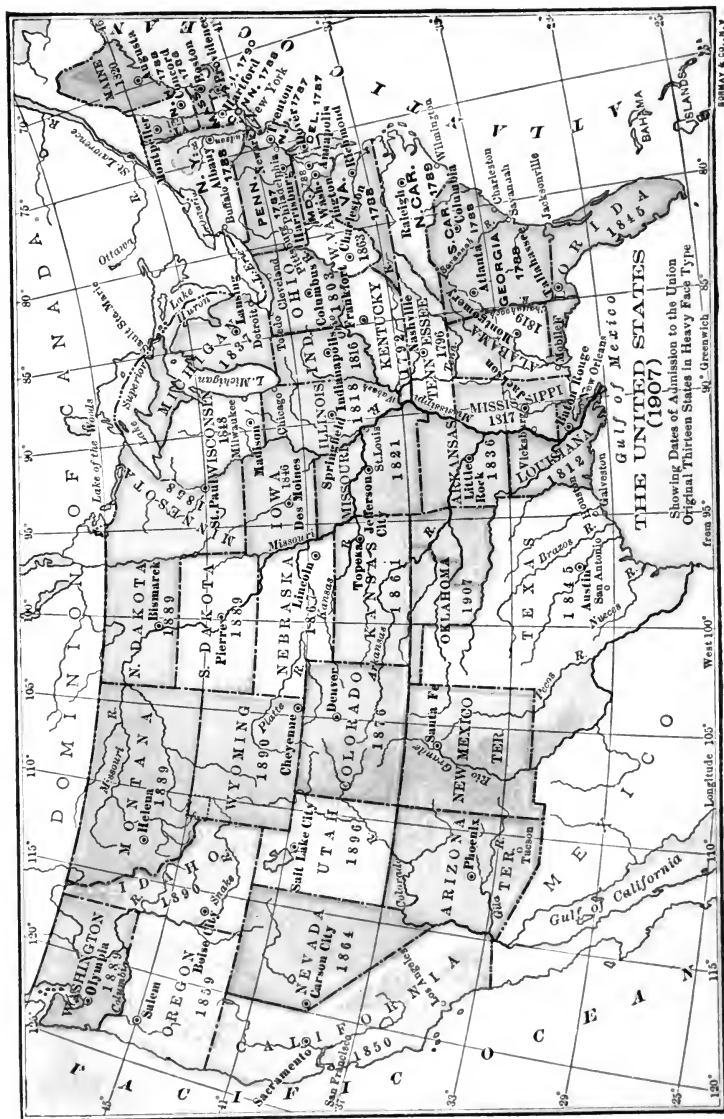
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# AMERICAN GOVERNMENT

## INTRODUCTION

### CHAPTER I

#### GENERAL CHARACTER OF AMERICAN GOVERNMENT

**1. Purpose and Nature of Government.**—Although the *primary* purpose for which government exists is the *protection* of our lives and property, its work includes so much more that we may truthfully say the object of government is to *protect* the citizens of a country and to *promote their general welfare*. Not only do our governments punish the persons who rob us or do us personal injury, and so prevent others from committing similar acts of violence; but they make and carry out laws under which we may buy and sell goods, loan or borrow money, and make contracts. They care for the public health and develop communication with other sections by constructing roads and building bridges. They give a common school education and sometimes collegiate training at public expense, and often provide us with free libraries, with free parks, and art galleries. Further than that, they conduct great business operations where the business is of such importance to all the citizens that it ought not to be left to private parties. For example, the national government collects, transports, and delivers letters, periodicals, and books at charges so low that they do not cover the cost of doing this work. The governments of many cities have established systems of waterworks, and furnish a supply

The primary  
object of  
government.

The  
secondary  
functions  
performed  
by our  
govern-  
ments.

of pure drinking water at the lowest possible charges. These and many other things our governments are doing for our protection and benefit, not at intervals, but every day in the year.

Two uses of the word "government."

Two distinct uses of the word "government" should be noted carefully. In a narrow sense, government may mean simply *the ORGANIZATION composed of sets of officials who care for the public interests of the citizens*. When the word is used in that way, we speak of the national government, the state government, the local governments, town, county, or city, since there are as many distinct organizations as there are territorial divisions to be governed. In a broader sense, the word is employed, as in the first part of the preceding paragraph, to indicate *the AUTHORITY to which the task of ruling is assigned*.

Benefits of government.  
Obligations of citizens.

**2. Government and the Citizens.** — By our forefathers who declared their independence of Great Britain, government was looked upon somewhat as a necessary evil. They emphasized the dangers of government and minimized its benefits. So many of the prejudices of that day have been removed by a century and a third of self-government that we often go to the other extreme. To-day the benefits and advantages are extolled, because we have government "for the people" as well as "by the people." We often fail to appreciate the real needs of our governments and the necessary support we should give them. We fail to discriminate between the governmental work that is wise and that which is unwise, between governmental tasks well performed and duties ill-performed or neglected. Instead of protesting against extravagance on the one hand, and on the other paying cheerfully the taxes for necessary work or improvements, we either grumble at the financial burdens placed upon us by our governments, or indifferently submit to waste and bad government. When popular interest is lacking and the public offices become filled with selfish or corrupt men who use their power for their own advancement, or sacrifice

the public good for favored interests, we close our eyes to facts and assert that our government is the best in the world. If the benefits which we should derive from government are often lost, and the disadvantages alone are apparent, it is because we fail to draw the line between the duties which our government can perform and the work it cannot do, because we neglect political duties for those of business or society, or because we consider misgovernment normal and unavoidable.

### THE NEED OF GOVERNMENT

**3. The Essential Functions of Government.**—Some people have asked the questions, “Why do we need governments?” “Cannot most or all of the duties enumerated above (§ 1) be performed as well or better without the aid of government?” Even those extremists who believe that government should do as little as possible, freely admit that life and property must be fully protected by it, for, if every man may take the law into his own hands, we should soon return to that condition of barbarism where might makes right.

Protection of life and property.

Government is also necessary to enact laws which define our *legal relations* to one another, or which allow us to make with other parties *contracts* or agreements, which the governments will compel both them and ourselves to perform. In so complex a civilization as ours, the laws relating to these subjects must not only be fixed and clearly understood, but the rights of every individual under them must be guarded zealously, and these duties government alone can fulfill.

Legal and business relations.

In his admirable book on *The State*,<sup>1</sup> Woodrow Wilson enumerates eight “constituent” or essential functions of government.

An enumeration of essential functions.

(1) The keeping of order, and providing for the protection of persons and property from violence and robbery.

(2) The fixing of the legal relations between man and wife and between parents and children.

<sup>1</sup> § 1478.

(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.

(4) The determination of contract rights between individuals.

(5) The definition and punishment of crime.

(6) The administration of justice in civil causes.

(7) The determination of the political duties, privileges, and relations of citizens.

(8) Dealings of the State with foreign powers: the preservation of the State from external danger or encroachment, and the advancement of its international interests.

The extent  
of govern-  
mental  
activity.

**4. The Optional Functions of Government.** — Very few people object when government performs these duties; but some persons doubt whether government should attempt to look after such things as the construction of roads, the maintenance of schools, the care of the poor, and many others which in times past have been done by each individual for himself, or by voluntary organizations. If we consider the difficulties encountered by individuals or associations in deciding upon necessary improvements, and in securing funds for the work, we shall see why it has been found advisable to leave matters of common interest to our governments, which are fitted for this work both because of their organization and by virtue of the authority which they possess.

An enu-  
meration  
of some  
optional  
functions.

As a partial list of these optional or "ministrant" functions, Woodrow Wilson gives the following:<sup>1</sup>—

(1) The regulation of trade and industry. Under this head I would include the coinage of money and the establishment of standard weights and measures, laws against forestalling and engrossing, the licensing of trades, etc., as well as the great matters of tariffs, navigation laws, and the like.

(2) The regulation of labor.

(3) The maintenance of thoroughfares, —including state management of railways, and that great group of undertakings which we embrace within the comprehensive term "Internal improvements."

<sup>1</sup> *The State*, § 1479.

(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).

(5) The manufacture and distribution of gas, the maintenance of waterworks, etc.

(6) Sanitation, including the regulation of trades for sanitary purposes.

(7) Education.

(8) Care of the poor and incapable.

(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.

(10) Sumptuary laws, such as "prohibition" laws, for example.

**5. The Proper Scope of Governmental Duties.** — The extent to which any country shall permit its governments to undertake any or all of the functions just mentioned depends upon its history, its needs, and the wishes of its people.<sup>1</sup> In colonial times, when villages were few and small, when there was no manufacturing and little commerce, when a simple farm life was the rule, very little governmental supervision was necessary. Large cities, great trusts, railways of continental magnitude, and entirely different standards of living have changed all this. At present our governments must control and regulate many more actions of the citizens than formerly, in order not only to promote their welfare, but to give them protection. For example, no one doubts the right of the government to pass and enforce all proper measures for the health of the community. This may lead in crowded cities to regulations for individual householders that are very obnoxious. Dealers may be obliged to submit to inspection of goods which might injure members of the community, and factories are continually under supervision to see that the health of the operatives is in no wise endangered. Too little regulation is, like too much, a mark of poor government. We must see that there

Conditions  
affecting  
govern-  
mental  
activities.

Willoughby,  
*American  
Citizenship*,  
53-66.

Wilson,  
*The State*,  
§§ 1514-  
1536.

<sup>1</sup> The extreme *individualist* believes that our governments should perform a *minimum* of functions; the *socialist* that the State should do everything for the individual or society. Most people occupy an intermediate position.

is just enough, and that it is never applied arbitrarily. History shows that it will be better for a community to leave something undone than at one stroke to alter its policy radically and undertake important duties for which it has had no proper training. In no case should a people undertake lightly duties which may seem necessary that can only be performed at a loss to individual freedom.

Three sets  
of govern-  
ments  
necessary.

**6. The Need of National, State, and Local Governments.**—No one government can do all the things needed by the people, for some subjects, like the making of treaties with foreign nations, must be intrusted to a single government for the whole United States, in order that the people of New York may not have one treaty with France, those of Illinois another, and those of California a third. Other duties, such as the making of roads and care of schools, can be properly performed only by governments of small districts, like towns, cities, or counties. We have, therefore, *local governments* to look after purely local affairs; *state governments* to make laws on all subjects that ought not to vary greatly from county to county, and yet need not be the same throughout the United States; and a *national government* which represents us in our dealings with other nations, cares for trade relations between the States, coins money, and makes the laws that should be the same in Maine as in Texas.

## THE ESSENTIAL FEATURES OF AMERICAN GOVERNMENT

The con-  
stitutions  
embody  
the wishes  
of the  
people,

**7. Our National and State Constitutions.**—All of the governments in the United States are *popular governments*—that is, the people, acting through the qualified voters or legal representatives, decide what the form of each government shall be, what power it shall possess, and in what way the government and its powers shall be changed at any time. In order, however, that the form and the powers of the governments shall remain the same until the people



wish them changed, the people of the Nation have adopted the very important document called the Constitution of the United States, and the people of each State have adopted a similar constitution for their State. By these *written constitutions* the people have created such governments as they think are best fitted to care for the public interests of the States and the Nation. The constitutions may be amended to meet new needs of the people, but by their rigidity prevent hasty changes. They cannot be altered by the *governments*, neither can the governments make any change in their own powers. *All changes in an old constitution must be made by the people, who made that constitution, and who may abolish the old constitution and have a new one in its place.*<sup>1</sup> Since, therefore, the people may change their old constitutions and make new ones, we say *the people are sovereign*; that is, the people have the supreme power which governments and individual citizens are obliged to obey.

and can be changed only by the people.

Hart,  
*Actual Gov't*,  
§§ 19, 28-31.

**8. Representative Government through Political Parties.** — The governments created by the constitutions comprise not only the national government and the central governments of the States, but the local governments of the States as well. All of these governments are composed of *representatives* who are elected by voters in the territory governed, or of officials who are appointed by some direct representative of the people. Some of the representatives, as the President of the United States or the governors of the States, represent the whole Nation or State. Others, like the members of the lower house of Congress, or practically all members of the state legislatures, are chosen from *districts*. It is the American practice, when representatives are chosen for any legislative body, to divide the State into districts which shall have, as nearly as possible, the same population. In short,

Representation from districts.

Hart,  
*Actual Gov't*, § 20.

<sup>1</sup>The exact method by which the people are to change any existing constitution is prescribed in the constitution itself. There is considerable variation in the process used to amend the present state and national constitutions, as we can see by consulting §§ 162, 197.

*representative government in America means the representation from territorial districts of equal populations.*

Political  
party  
represent-  
atives.

Ashley,  
*Am. Gov't*,  
§§ 36-41.

These representatives, and officials appointed by them, are members of some political party. Whenever an election occurs to fill a position, each political party attempts to persuade the voters to select a man from its party as the people's representative. Although some elections, especially in cities, are not party contests, it can truthfully be said that *government in the United States is representative government of the people acting through political parties.*

Citizenship  
in the  
Constitu-  
tion.

**9. Citizenship and Its Rights.** — Our constitutions not only give the form and the powers of the governments, as described briefly later in this chapter (§§ 13-19), but they treat of the very important subject of *citizenship*, enumerating the rights which all citizens possess, rights with which no government may interfere.

Definition  
of citi-  
zenship.

The national Constitution in the Fourteenth Amendment, adopted in 1868, gives this definition of citizens: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Citizenship may be acquired therefore by *birth* in this country or by a process of *naturalization* (§ 291) for natives of other lands. *Practically all of the men, women, and children in the United States are CITIZENS.*

Some rights  
of citi-  
zenship.

Ashley,  
*Am. Gov't*,  
§§ 222-224.

The rights of citizens are of such importance that many of them are mentioned in the constitutions, in order that no one chosen to represent the people shall arbitrarily interfere with citizens in the performance of their everyday duties. Among these are the right to free speech, religious freedom, exemption from search of a home unless accused of crime, freedom from arbitrary arrest or extended imprisonment without trial, and the right to a free and fair trial by a jury of citizens.

**10. The Privilege of Voting.** — These constitutions also state who may take part in the work of government by

voting. Not all citizens are allowed to vote, as some people imagine, because most of them are not old enough nor sufficiently trained to do so intelligently. Accordingly, only those classes of citizens who are especially qualified by maturity, experience, and their daily contact with the world, are allowed the privilege of voting. At the present time no one less than twenty-one years of age is granted this privilege, and in only four States are women allowed to vote.

Why all citizens are not voters.

Hart, *Actual Gov't*, § 34.

The qualifications of voters are given in the state constitutions, as the United States Constitution allows those who may vote for state officials to vote also for national officials. Aliens who intend to become citizens enjoy the elective franchise in some States. (See § 30.)

State requirements.

**11. The Departments of Government.**— In order that any government may perform properly the work for which it has been created by the people, it must have three departments. First of all, there must be some body to make laws, and this body is called the legislature or the *legislative department*. Then, we must have officials who see that the laws are obeyed, and those officials who enforce the laws constitute the *executive department*. Finally, a system of courts is necessary so that proper punishment may be meted out to those who break the laws, and that persons who have suffered loss or injury at the hands of others may have an opportunity to secure redress for the wrong done. Those courts which interpret the laws are known as the *judicial department*. One of the most distinguishing characteristics of American government is the almost complete *separation* of these three departments. This separation has been made because our people have always believed that the liberties of the people would be endangered, if the departments were united.

Why three departments are necessary.

Ashley, *Am. Fed. State*, §§ 24-26.

**12. Our Federal System of Government.**— Our country is governed under *two* great *systems* of government, each of which has its own constitution or set of constitutions. These two which carry out the wishes of a *single sovereign*

Distribution of powers in a federal system of government.

people are the NATION and the STATES.<sup>1</sup> Such a division of power between state and national governments, which look after different interests and work independently, although simply supplementing each other, is called a "FEDERAL SYSTEM" of government. This division of the work of governing leaves to the *national government* such matters as making war, raising an army and navy, making treaties with foreign countries, regulating foreign and interstate trade, admitting new States to the Union, and many other things that no one State can do for itself, while the governments of the *States* are allowed to make and carry out laws concerning the holding and transference of land, laws dealing with marriage and divorce, education, the punishment of crime, the incorporation of industrial and most other corporations; in fact, with an almost innumerable list of subjects for which uniform laws are not necessary throughout the United States. This federalism is perhaps the most distinguishing and important feature of our government.

Difference  
between a  
centralized  
and a  
federal  
system of  
government.

In some countries, most or all of these subjects last named are looked after by the national government, which is then called a *centralized* government. In the United States, however, these powers of government are left with the States, and the States cannot be deprived of them except by the people of the whole United States in the cumbersome way provided for the amendment of the national Constitution, so that we have a system that is not centralized, but which constitutes a form of *federalism*.

Summary.

The most important characteristics of American government may be summarized as follows: The United States has (1) *popular government* (2) based on the *written constitution* and (3) carried into effect through a system of *representation*. It is distinguished by (4) a *broad citizenship* with ample protection of citizens' rights, (5) *manhood suffrage*,

<sup>1</sup> By the term "State" is meant the people of the whole State, who are governed under a central government usually called the "state" government, and under local governments.

and (6) *the separation of the departments of government.*  
 (7) Although the people of the nation are sovereign, the *Federal System* provides that part of the work shall be performed by distinct governments, the national and the state.

### THE NATIONAL GOVERNMENT

**13. The United States Constitution.** — Our national government derives its authority from the people of the United States through our national Constitution, which was drafted by a convention held in Philadelphia in the summer of 1787, and was ratified by conventions elected for that purpose in the thirteen States that then composed the Union. This Constitution enumerates the different powers that may be exercised by the three departments of the national government, and tells how Congress shall be organized, how the President shall be chosen, and what the national judicial system shall be like. By it the States are prohibited from making war, treaties, or alliances, in order that the States may not be able to interfere with the work of the national government. *Fifteen amendments* to this Constitution have since been adopted. It will be well to consider the organization of the different departments of the government, although we shall not study until later the more important subject of their powers.

Its adop-  
tions and  
provisions

**14. Congress.** — The legislative power granted to the national government is vested in a Congress of two houses, the smaller of which is called the *Senate*, and the larger the *House of Representatives*.<sup>1</sup> The Senate is composed of two members from each State who are elected by the state legislature for a term of six years. The representatives, on the contrary, are elected for a term of two years by the voters from districts into which the States are divided, the number of districts in a State depending upon its population. In addition to its general legislative powers,<sup>2</sup> each of the

The houses  
and their  
special  
powers.

<sup>1</sup> Commonly called the House.

<sup>2</sup> See Constitution of United States, Art. I, § 8.

houses is given certain *special powers*, for which it is thought to be particularly fitted. For example, when the President appoints an official to a position, the Senate has the right to confirm or reject the appointment, although the House of Representatives has nothing to say about the matter.

The President and his assistants.

**15. The Executive Department.**—The execution of the laws made by Congress is intrusted to the *President* of the United States and assistants appointed by him with the consent of the Senate. Presidential elections occur in November of every year divisible by four, and the successful candidates for the offices of President and Vice President are inaugurated upon the 4th of March in the following spring, holding office for four years. The chief assistants of the President, such as the Secretaries of State, War, and the Treasury, and others, form his *Cabinet* and aid him in performing his duties.

The Supreme Court and inferior courts.

**16. The National Judiciary.**—All judges connected with the national courts are appointed for good behavior by the President with the consent of the Senate. Our chief court, called the *Supreme Court*, consists of a chief justice and eight associate justices who sit as a single body at Washington; but the judges of the lower courts—the Circuit Courts of Appeals, the Circuit Courts, and the District Court—try cases in the various cities of the country, so as to be nearer the places where the parties to the suit reside.

## STATE AND LOCAL GOVERNMENT

People make the state constitutions subject to the national Constitution.

**17. The State Constitutions.**—Each State makes its own constitution, the voters electing delegates to a state constitutional convention, which frames the constitution, and then, usually, gives the voters an opportunity to accept or reject it. The state constitution cannot give the state government power to do anything denied to the State by the national Constitution. Subject to this limitation, it may grant the state legislature as much or as little power as it

pleases, may make the legislature large or small, may have the governor elected for a long or short term, and may arrange to have the judges either elected by the voters or appointed by the governor or the legislature. All of which shows that the people of each State have a great deal of freedom in looking after their own affairs, though they must be careful not to do anything forbidden by the Constitution of the United States.

**18. Organization of the State Governments.**—All of the States in the American Union have governments that are very much alike. *State legislatures* are invariably made up of two houses, one of which is larger than the other, although the members of both are elected by the voters in districts into which the States are divided. The people also elect the *governors* and the other chief executive officials, the remainder being appointed. *State judges* are not so universally chosen by popular election, and their terms are apt to be longer than those of the legislators and the governors; but even with the judges, short terms are the rule and appointment the exception.

The three  
depart-  
ments.

**19. Forms of Local Government.**—Local government is of several kinds—that of the county, the city, the town, the village, and the school district. All of the States are subdivided into *counties*, but the officials elected in the counties devote as much of their time to carrying out state laws as to looking after purely local affairs. Every *city* has its mayor, its council, and a large number of administrative officials who hold office for very short terms. Small urban centers frequently have *village* government somewhat similar to that of the cities. In the New England States and a few others, every county is made up of several *towns*. Each town holds a mass meeting of the voters, at which most of the local laws are made and town officers are selected. In many States the principal political subdivisions of the counties are the *school districts*, which care for the most necessary local interests.

The struc-  
ture of  
govern-  
ment in  
counties,  
cities, and  
towns.

### General References

- Wilson, *The State*, §§ 1084-1095, 1473-1513.  
Hinsdale, *The American Government*, §§ 5-7, 223-233, 248-262.  
Bryce, *The American Commonwealth*, abridged ed., pp. 3-5, 16-21, 224-242, 287-296.  
Ashley, *The American Federal State*, §§ 24-29, 238-246.  
Hart, *Actual Government under American Conditions*, pp. 14-64.

### Studies

1. What are the most essential duties performed by any government? What less important duties are now commonly performed by our national, state, or local governments? Wilson, *The State*, §§ 1478-1512.
2. What is meant in political science by the term "State"? Give an explanation of the expression "Federal State." Ashley, *American Federal State*, §§ 2, 11, 12.
3. The present scope of governmental duties. Wambaugh, E., *Atlantic Monthly*, 81 (1898), 120-130.

### Practical Questions

1. Enumerate some of the most important obligations of citizens to their governments.
2. Classify the essential functions given in § 3, grouping them under as few headings as possible.
3. Name the most important characteristics of American government.
4. Does the United States government, or do the respective state governments, make laws in the following cases?  
(On these questions, consult the United States Constitution, Article I, Section 8, and if the power referred to it is not mentioned there, it may be assumed that it is exercised by the States and not by the national government.)
  - (1) Making a naturalization law by which foreigners become citizens.
  - (2) Determining the minimum length of the school year.
  - (3) Punishing a murder committed within a State.
  - (4) Deciding whether a foot or a meter shall be the legal standard for linear measurement.
  - (5) Caring for a postal system.
  - (6) Levying duties upon cloth imported at New York.
  - (7) Making laws relating to marriage and divorce.



## CHAPTER II

### THE SELECTION OF PUBLIC OFFICIALS

#### GENERAL CONSIDERATIONS

**20. The Two Methods of Selection.**—To perform the legislative, executive, and judicial duties which all of our governments must undertake, several hundred thousand persons must be chosen. In general, the most important officials are *elected* by the voters at regular elections, but many higher offices and most of the minor positions are filled by persons *appointed* by some higher elected official or set of officials.

Election and appointment.

The system of appointment is used much more in connection with the national government than with those of the States, counties, cities, and towns. Only the President, Vice President, and members of the national House of Representatives are elected directly or indirectly by popular vote, although the United States senators are chosen by the state legislatures. All national judges, and national executive officials and employees, numbering more than 350,000, are appointed. Members of *lawmaking bodies are invariably elected* by the people. These include congressmen, state legislators, city councilmen, county supervisors, and town selectmen. Election is used for almost all state or local judges, and for the most important executive and administrative officials of the States and localities. Yet the number of persons appointed for state or local positions, aside from those connected with schools, probably outnumbered the elected officials three to one.<sup>1</sup>

Relative use of the two methods.

<sup>1</sup> Not all persons connected with any government are called officials, for most of them are merely employees whose work involves comparatively little responsibility.

Length of  
terms. Ro-  
tation in  
office.

**21. Terms and Compensation.** — It is one of the principles of American government that public servants shall be elected for *short terms* of office. It is one of the practices that, as far as possible, changes shall be made at frequent intervals. This custom, best known as "*rotation in office*," satisfies a desire deeply ingrained in American nature, for popular rights seem to be protected if any person is prevented from holding one office several terms in succession. We shall notice later that this desire is not realized at all fully in many of the governments that we have, although it is true that nowhere else in the world, except in Switzerland, are the governments really so dependent on the people and so closely in sympathy with them as in the United States.

Compensa-  
tion of  
higher and  
lower offi-  
cials.

Steele, A. H.,  
in *Guntton's*  
*Mag.*,  
18 (1900),  
419-428.

James, T. L.,  
in *No. Am.*  
*Rev.*,  
182 (1906),  
266-274.

Influence  
of prestige  
and patron-  
age.

In America, to a much greater extent than in other countries, public officials are paid. The salaries for the *highest officers* are much smaller than the income that would be obtained in other pursuits by the kind of men we wish to represent us in these positions, but the salaries attached to the *less important elected offices* are good compared with the responsibilities of those positions. One of the results of our democratic spirit has been the tendency to make salaries equal, so that our lower officials and sometimes appointed employees are as much overpaid as our more responsible officials are underpaid.<sup>1</sup> Many offices, however, which carry very heavy burdens, are unpaid, the position of school trustee being a good example.

**22. Desire for Public Office.** — Salary is one of the less important inducements offered by the high offices, although the principal attraction for the lesser positions. Honor and

<sup>1</sup> The highest salary paid to any official is that given to the President of the United States, \$75,000 a year, and, in addition, the use of the White House and payment of many expenses. Cabinet officers receive but \$12,000 a year, and congressmen only \$7500. A few governors have a salary as high as \$10,000 and some expenses, but one gets as little as \$1500. Some mayors and city attorneys have large salaries, but, as a rule, the most responsible local officials are poorly remunerated.

power count for much more in the chief places of trust. In spite of the fact that we Americans dread "one-man power" and have arranged our entire scheme of government to prevent the assumption of despotic authority, prominent public offices offer great opportunities for action. The publicity given to a public man makes many an office desirable. When the securing of an elective office means the privilege of appointing scores or possibly hundreds of men to vacancies, it will not be neglected, even if the salary is small. There are very few elected offices that do not give the incumbent some share of this *patronage*, or power of appointment, although the position may be so humble that the appointee is only a doorkeeper or janitor. It is not strange that such opportunities should appeal to the man who places private ambition or gain above public service.

Woodburn,  
*Pol. Parties and Problems*,  
254-265.

A sum almost as great as the aggregate salaries of all persons appointed to positions under our governments is dispensed every year for school buildings and supplies, roads and other public improvements, street lighting, transportation of the mails, and numerous other subjects. A perfectly proper use of these funds which amounts to nearly, if not quite, one billion dollars a year, means immense power to those who decide for what the money shall be spent. In granting contracts and in other ways even an honest official may not hesitate to increase his influence through the advantages of his position. What a dishonest man might do must be apparent.

Opportunities for  
expending  
money.

**23. The Steps in Popular Election.**—In view of the advantages derived from public office, it is not surprising that there should be two or more candidates for most positions, even though the place bring strife, criticism, and hatred. The importance of the subject to the citizen, and especially to the voter, becomes apparent when we reconsider the importance of the work done by our governments, the number of officials elected at the oft-recurring elections, and the difficulties of selecting the right men who will continue to

Importance  
of the  
subject.

perform their duties in a satisfactory manner. In the following paragraphs we shall examine the general process of election. It will be well to note first the four steps in the process.

From nomination to installation.

When voters go to the polls and cast their ballots, they vote for those only who have been *nominated* for that office. These nominations are made several weeks before the election by conventions held by the political parties or in primaries of the voters composing the political parties. In the *campaign*, between the nominations and the election, these nominees or candidates, aided by the very complete organization of their party, make every effort to win over the voters to their side. After the voters have expressed their preference in the *election*, the successful candidates are *installed* in office upon the day set by law for assuming their new duties.

## NOMINATIONS FOR ELECTIVE OFFICE

Composition of the conventions.

Dallinger, *Nominations for Elective Office*, 64-65.

**24. Nominating Conventions.**—Most candidates for the offices which are filled by popular vote are chosen by nominating conventions of delegates. If the convention meets to nominate candidates for state offices, the delegates are chosen usually in county conventions. The county conventions are in turn composed of *delegates elected directly by the voters in primaries*. These conventions are ordinarily large assemblies, even when the district for which candidates are selected is small. The most interesting conventions of all, those that select nominees for the presidency, are reserved for special treatment later (§ 317).

Procedure in a convention.

Dallinger, *Nominations*, 65-74.

When the delegates have gathered upon the day selected, the convention proceeds to choose a temporary chairman and other officers, and to appoint several *committees*. One of these committees decides what delegates have been chosen to the convention. If two sets of delegates have been selected from the same district, the convention must admit only one, and the committee, by recommending the exclusion of un-

desired contestants, may really decide the later action of the convention. Another committee reports to the convention a set of *resolutions* embodying the party's views upon public questions, while a third proposes the names of the permanent officers of the convention. When it has been organized, the convention begins its real business of *nominating candidates*. If but one name is suggested for any office, the secretary is usually instructed to cast a ballot for that person. Otherwise, the delegates vote by ballot until some one person has a majority of all the votes cast. If the convention is controlled by the party managers who have selected the candidates in advance, the nominations lack interest, but when there is any doubt, or a decided contest takes place, the excitement is intense.

**25. The Primaries.** — Most of the candidates for office in the smallest districts and many for larger districts are nominated directly in primaries. The delegates to all local conventions are chosen directly by the primaries and the delegates to state and national conventions indirectly by the primaries, so that in a sense *primaries are the most vital part of the system of popular election*. The name "primary" is used in two different ways. (1) Originally it meant a *mass meeting* of voters of a single party within a precinct, the smallest district, for the purpose of selecting delegates or nominating local candidates. (2) It is used now also to cover the *primary elections* held for the selections of delegates to conventions, or for the direct nomination of candidates. In this primary election, which is similar to a regular election (§ 29), members of all parties take part, but no voter may vote for the nominees or delegates of more than *one* party.

It would naturally be supposed that every voter would attend the primaries to which he is eligible, because his only opportunities of securing good men for office are at the *primaries* or at the *polls* on election day. At the election, his choice will be limited to the candidates that have been nominated, all of whom may be unsatisfactory; but at the

Place of the primaries in the scheme of elections.

Hart, *Actual Gov't*, § 45.

Fuller, *Gov't by People*, 42-53.

Importance of the primaries.

Remsen, *Public Primaries*, 48-58.

Fuller, *Gov't  
by People*,  
31-42.

Merriam,  
*Primary  
Elections*,  
133-140.

primaries he may aid in electing delegates who will be sure to favor good men. In reality, the primary gives him a much better opportunity to obtain good government than the election does. Nevertheless, the majority of the voters in the United States neglect to attend the primaries, or go only to confirm the list of delegates proposed by the ward committee of their party (§ 37) and frequently approved before the meeting of the primary at a mass meeting called a *caucus*. This committee undoubtedly knows better than the average voter who will make good delegates, but sometimes a committee proposes unfit men that will not act for the best interests of the party. It is of the first importance, therefore, that every voter attend the primaries of his party, and make sure that the right men are chosen.

Candidates  
selected by  
the voters  
directly.

Allen, P. L.,  
in *Outlook*,  
84 (1906),  
120-125.

Shaw, W.B.,  
in *Outlook*,  
90 (1908),  
383-389.

Merriam,  
*Primary  
Elections*,  
68-89.

**26. Direct Nominations.** — Because of the dissatisfaction with the older method of nomination through conventions which might be controlled by politicians, and in response to the general demand that government should be brought close to the people, direct nominations have come into use for *local* offices in a majority of the States, and for *state* offices in most of the Southern commonwealths, in almost all of the Middle Western States, and in those of the extreme Northwest. The names of all those who desire or will accept the nomination for any office are placed on file with the city or county clerk as soon as they have obtained the signatures of a certain number of voters. On a day set by law a *primary election* is held, similar in most respects to a regular election (§ 29), and the voters are allowed to select their candidates for each office to be filled at the coming election, provided that no one is permitted to vote for candidates of more than *one* party, in order that the members of one party shall not be allowed to influence the nominations of another. The candidate of each party who receives a greater number of votes than any other candidates of the same party for the same office is declared the nominee of that party for that office, and his

name appears as such on the official ballot used in the regular election. This system gives the voters a somewhat freer choice, but it does not produce satisfactory results unless they vote, and vote intelligently.

Many of the States make use of the direct primary to increase *public control of the party organizations*, forcing the parties to choose their committees at these primary elections. This should produce party organizations fairly representative of the members of the party. There is little doubt that many of the vexed problems of nominations for elective office will be solved by perfecting and reforming the party organization, and, except in city elections, by permitting the party leaders to suggest names for most of the candidates to be considered at the primaries. The direct primary can then be used as a check to secure the nomination of the best possible candidates.

**27. The Campaign** may occupy the entire time between the nominations and the elections, or it may be limited chiefly to the month preceding the polling of the votes, every effort being made by each party to elect its candidates. The campaign is conducted by the permanent party *committees*, or by special executive committees (§ 36) which represent the candidates particularly, if the campaign is of sufficient importance. In a presidential campaign, for example, there is a special national executive committee whose chairman for months directs the campaign, and whose members divide the task of persuading or convincing voters. *Money* must be obtained to pay the expenses of printing campaign *literature* and to secure the services of *speakers*, while *personal efforts* must be used to obtain the support of the "waverers," and bring all of the party's adherents to the polls. In a city election the general conduct of the campaign, including the raising and distribution of funds, belongs to the city committee, and the ward committees under its charge organize clubs, hold meetings, and perform active duties on election day. In the campaigns of to-day, fortunately, less

Party control by, and party leadership in, direct primaries.

Efforts made to secure votes.

*Rev. of Revs.*, 22 (1900), 549-562.

appeal is being made to prejudice and selfish interests than was formerly the practice.

## ELECTIONS

Registration  
of voters.

Fuller,  
*Gov't by  
People*,  
22-30.

**28. Preëlection Requirements.** — In one half of the States all electors who wish to vote must *register* their names before election, showing where they reside and proving that they have a right to vote. In the other States, registration is usually required only in cities. These registered electors can then vote only at the election booth of the precinct in which they live. This enrollment is necessary to prevent men from voting in more than one precinct, as the officials in charge of the election usually do not have a personal acquaintance with the voters, except in country precincts. In fact, registration lists do not prevent "repeaters" from registering under different names in different precincts. Some fraud results from a failure to revise lists at intervals, so that repeaters often use the names of persons who have moved or died.

The Aus-  
tralian  
ballot.

In early elections and in England until recently, votes were given verbally. The written ballot came into use in America during colonial times, but as elections became more numerous and democratic, ballots printed by each party for its members and open ballot boxes led to a great amount of fraud. Reform began in this country about 1888. Most of the States have now adopted, with some modification, a form of *ballot* similar to that in use in Australia. The names of candidates of each party or ticket are placed in a column separate from the candidates of all other parties. Sample ballots are sent to the voters by the city or county clerks before election, so that an opportunity is given to learn the names and investigate the qualifications of the candidates.

The process  
of voting.

**29. Holding an Election.** — A person who wishes to vote goes to the polling place which has been selected for his



# A SAMPLE AUSTRALIAN BALLOT

1313

To vote for a person, stamp a cross (X) in the square at the right of the name.

REPUBLICAN TICKET		DEMOCRATIC TICKET		SOCIALIST TICKET		PROHIBITION TICKET		CONSTITUTIONAL AMENDMENTS	
For Governor, GEORGE C. PABEE.	For Governor, FRANKLIN K. LANE.	For Governor, ALEXANDER ROSBOROUGH.	For Governor, GIDEON S. BROWER.	For Governor, THEODORE D. KANOUSE.	<input checked="" type="checkbox"/>		Senate Constitutional Amendment No. 4 Relating to the public school system and the support of public schools.		
For Lieutenant-Governor, ALDEN ANDERSON.	For Lieutenant-Governor, I. B. DOCKWEILER.	For Secretary of State, ALEXANDER ROSBOROUGH.	For Lieutenant-Governor, FRANK R. WHITNEY.	For Lieutenant-Governor, S. P. MEADS.			No.		
For Secretary of State, CHARLES F. CUBBY.	For Controller, FREDERICK HARKNESS.	For Treasurer, SAM H. BROOKS.	For Treasurer, OSWALD SEIFERT.	For Secretary of State, ARTHUR C. BANTA.	<input checked="" type="checkbox"/>		Senate Constitutional Amendment No. 18 Relating to the division of the State into fish and game districts.		
For Controller, E. P. COLGAN.	For Attorney-General, WILLIAM A. GETT.	For Surveyor-General, C. H. HOLCOMB.	For Attorney-General, CAMERON H. KING.	For Controller, J. E. MCCOMAS.			No.		
For Treasurer, TRUMAN REEVES.	For Attorney-General, U. S. WEBB.	For Surveyor-General, VICTOR H. WOODS.	For Surveyor-General, W. STEVENSON.	For Surveyor-General, THOS. B. RUSSELL.	<input checked="" type="checkbox"/>		Senate Constitutional Amendment No. 3 Relating to the exemption from taxation of all bonds issued by the State of California, or by any county, city, and county, town, municipality, municipal corporation of any sort, or district (including school, reclamation, and irrigation districts), within said State.		
		For Clerk of the Supreme Court, FRANK C. JORDAN.	For Clerk of the Supreme Court, SCOTT ANDERSON.	For Clerk of the Supreme Court, C. C. COLLINS.			Yes.		
		For Superintendent of Public Instruction, THOMAS J. KIRK.	For Superintendent of Public Instruction, ANNA F. SMITH.	For Superintendent of Public Instruction, CHARLTON EDHOLM.	<input type="checkbox"/>		Senate Constitutional Amendment No. 6 Relating to city charters.		
		For Superintendent of State Printing, W. W. SHANNON.	For Superintendent of State Printing, S. H. LAVEETY.	For Superintendent of State Printing, LEROY S. ATWOOD.			No.		
					<input type="checkbox"/>		Assembly Constitutional Amendment No. 25 Relating to the hours of labor on public work.		
							Yes.		
					<input type="checkbox"/>		No.		
							No.		

Hart, *Actual Gov't*, § 37.

Fuller, *Gov't by People*, 80-101.

precinct by the authorities, and which is kept open about ten hours on election day. He first gives his name and address to a clerk who records both and learns whether the voter was duly registered, provided registration is required. He then receives a numbered *official ballot*, which he takes into a booth where he is cut off from communication with others. With a rubber stamp he places a mark opposite the names of the candidates of his choice (or, if permissible, opposite the name of the party, if he wishes to vote a "straight" ticket), folds the ballot, and hands it to the election inspector. The inspector tears off the number, announces the name of the voter, and then deposits the ballot in the ballot box. The clerk at the same time records the fact that the person has voted. In most States some towns or precincts use *ballot machines* on which the voter records his preferences by the use of knobs and levers, the vote being recorded mechanically by the machine when the voter leaves the booth.

Challenging of votes.

Each party is allowed to have a certain number of "watchers," who make sure that the election proceedings are perfectly regular. Any voter may be "challenged" by any other voter on the ground that the former is not eligible to vote in that precinct. He must then take oath that he has a right, or he will be excluded from voting.

Canvassing the votes.

When the polls are closed, the ballots are publicly counted by the judges, who then forward the ballots to a canvassing board which examines the returns and makes an official announcement of the number of votes cast for each candidate. The successful candidates are duly notified and later installed in office.

Fuller, *Gov't by People*, 110-119.

Times of holding elections.

The usual time for holding county, state, and national elections is the Tuesday after the first Monday of November. City elections are ordinarily held separate from other elections, either in November of different years from the state elections or at other times. Town elections are usually held in the spring.



A SAMPLE VOTING MACHINE.

In many States the use of voting machines is permitted by law. In the one shown above all of the candidates on one ticket are in the same horizontal column, all of the candidates for any office being in the same vertical column. After closing the curtains the voter turns one of the large knobs shown at the left of the cut. This raises all of the little pointers in that horizontal column, and completes the process if the voter wishes to vote a "straight" ticket. If he desires to vote for other candidates for any offices, however, he turns down the pointer in the column in which the office is located and turns up the pointer which is immediately above the candidate preferred. In either case he then opens the curtains and the vote is mechanically recorded.



For almost all offices filled by popular election, only a *plurality* of votes is necessary to elect. Certain of the New England States formerly required a *majority* over all others for their governors, but as a second election was then often necessary, a majority is no longer demanded, except in Vermont, where the legislature is allowed to elect the governor if no one has a majority.

Pluralities  
and  
majorities.

*Salt.*

*True* 30. **Who may Vote.**—The qualifications for voters are prescribed by the States in their constitutions. The Fifteenth Amendment of the United States Constitution, however, prevents the States from denying to citizens the right to vote on account of race, color, or previous condition of servitude, so that, although the requirements are not the same in all the States, the differences are, on the whole, not very great. Two thirds of the States permit only *citizens* to take part in elections, but thirteen give the right of suffrage to *aliens* who have declared their intention of becoming citizens. In four States—Wyoming, Colorado, Idaho, and Utah—*women* are allowed to vote on the same terms as men. All over the country voters must be at least twenty-one years of age, and must have been residents of the State a certain period, varying from three months to two years, and of the county and precinct a shorter time.

General  
qualifica-  
tion of  
voters.

Hart, *Ac-  
tual Gov't*,  
§§ 34-35.

Fuller,  
*Gov't by  
People*,  
10-21.

Persons who are insane or otherwise mentally incompetent are universally excluded from voting, as are men convicted of some serious crime, for which they have not been subsequently pardoned. Inmates of public institutions usually, and paupers sometimes, are debarred from the suffrage, and many States demand the prepayment of taxes. Efforts have been made to raise the intellectual standard of the voters by shutting out those who cannot read or write. Some of the Southern States require ability to read, or possession of a fairly large amount of property.

Persons  
disqualified

Maine, Massachusetts, Connecticut, Delaware, California, Wyoming, and the States mentioned below demand an ability to read. Mississippi allows men to vote who can understand the Constitution when read to them. North Carolina has an educational test, but does not apply

Educational  
and other  
tests.

Bruce, *Rise  
of New  
South*,  
447-453.

it to those who voted or whose ancestors voted before 1867. South Carolina does not deprive those intellectually unfit if they own property assessed at \$300. In Alabama voters must be able to read or must own property worth \$300, unless they have seen military service. Virginia requires ability to read or understand the Constitution, or the payment of a state tax not less than one dollar per year, unless the individual has seen military service or is the son of an American soldier. In Louisiana those may vote who can read or write, or who own property assessed at \$300, or whose ancestors voted before 1867. Georgia permits veterans and their descendants to vote, limiting the suffrage for others to those who can read or understand the Constitution or own taxable property worth \$500. The clauses in five of these constitutions that really exempt whites from the disabilities which are supposed to be the same for all, are called "grandfather clauses." The United States courts have refused to consider cases which might force them to declare whether these provisions are contrary to the Fifteenth Amendment.

Congressmen and presidential electors are chosen by those persons in the different States who are allowed to vote for members of the state legislature.

Votes cast and counted, 13,961,566	
Persons qualified to vote . . . . .	19,850,000

#### HOW VOTERS STAYED AWAY FROM THE POLLS (1900) <sup>1</sup>

Before 1800.

**31. Historical Changes in the Suffrage.** — The suffrage requirements of to-day are the result of a gradual evolution extending over nearly three centuries. For our purpose, it will be sufficient to notice the general characteristics of three periods in our history. (1) The first includes the seventeenth and eighteenth centuries, during which the right to vote was greatly restricted. As a rule, no man was permitted to share in the election of public officials unless he was a *Protestant who owned real estate*. In the North, land of a certain value was required; in the South, a freehold of a certain size. (2) During the first half of the nineteenth century, these property qualifications were rapidly replaced

Between  
1800 and  
1870.

<sup>1</sup> Deducting five per cent from male population over twenty-one, to allow for persons disqualified for various reasons.

by a *taxpayers' qualification*, and later by one demanding that *citizenship* should be the sole requirement for electors. Many of the Western States went much further, and gave the ballot to those aliens also who had declared their intention of becoming citizens. The national government aided in this movement for the extension of the franchise, by proposing the Fifteenth Amendment to the Constitution of the United States, which in 1870 gave the negroes the same voting rights as the whites. (3) Since 1870 great progress has been made in placing the suffrage upon a safer basis. The list of persons *disqualified* because intellectually or otherwise incompetent grows constantly longer, an especial effort being made in the South to exclude the least-fitted blacks without violating the national Constitution. At the same time, discriminations regarding sex are becoming less pronounced, the standards for women when they are allowed to vote being the same as those for men.

McMaster, *United States*, V, 380-394.

Since 1870.

Oberholzer, *Referendum in America*, 120-125.

**32. Elections from Districts.**— Practically all of our law-making bodies are made up of representatives chosen for short terms from districts into which the States, counties, and cities are divided. In these cases the real *basis of representation is population*, provision being made usually for reapportionment of members and redivision of districts every ten years, following the national census or special state censuses. It is supposed that the districts used for the same elections are nearly equal in population, and are contiguous and often compact, but it is not always easy to make them so.

Form and use of districts.

Hart, *Actual Gov't*, §§ 36, 105.

Dealey, J. Q., in *Annals Am. Acad.*, 29 (1907), Mar. Sup., 70-82.

There is always great danger that a partisan legislature which has the right to redistrict a state, shall rearrange the districts for its own benefit, in spite of the laws requiring the districts to be equal in population and to be contiguous or even compact. This practice is called "*gerrymandering*"; and, if permitted, may thwart the popular will by electing, through the gerrymandered districts, a legislature which does not represent the majority. A usual method in gerry-

Gerrymandering.

Woodburn,  
*Pol. Parties  
and Prob-  
lems*, 275-  
282.

mandering is to unite as many strong opposition counties as possible in one district, thus allowing the party in power to elect its representatives from surrounding districts by fair pluralities. Good historical examples of gerrymandered districts are the odd-shaped Massachusetts district, in connection with which the name "gerrymander" was first used nearly a century ago, and the famous "shoestring" district in Mississippi of more recent date.

Object and  
difficulties.

Hart, *Actual  
Gov't*, § 38.

*New Encyc.  
of Social  
Reform*,  
975-978.

**33. Proportional Representation.**—It is believed by many students of political affairs that the evils of gerrymandering, and those of unequal representation as well, can be avoided by some form of proportional representation. By having the districts sufficiently large so that *many representatives are chosen from each district*, each party can elect from this district a number of representatives in *proportion* to the vote cast for its ticket. If the plan can be made to work, a much more just representation of parties in the legislatures will be the result. The chief obstacle to the adoption of proportional representation seems to be the strong attachment of Americans to the practice of electing from a *single district* one legislator who is a resident of that district—a practice which, in the opinion of a very high authority upon the American government, is a chief cause of the defects of our legislative bodies.<sup>1</sup>

Illinois  
system.

Illinois is the only State that has made adequate trial of proportional representation for state offices. There are fifty-one senatorial districts in each of which one senator and *three representatives* are chosen. Every voter may cast one ballot for a state senator and three for representatives, casting all three for one person, or for different ones, as he prefers. The districts are, however, too small to afford a fair test of the merits of the system.

Dangers  
arising from  
fraud and  
bribery.

**34. Efforts made to guard the Purity of Elections.**—In popular governments like ours, anything that prevents the people from voting and electing as public officials the

<sup>1</sup> Mr. James Bryce, the English statesman; see the *American Commonwealth*, abridged ed., pp. 133-146, 334-336.



persons whom they wish, is a serious misfortune. If any set of men, by using undue influence, bribery, force, or fraud, can defeat these wishes of the people, they have to that extent injured our political system. For these reasons, laws have been made, or have been proposed, which will protect the honest many from the corrupt few. Only a few years ago, before the Australian ballot was adopted, it was almost impossible for a man to vote secretly, as partisan workers were allowed free access to the polling places, and there was little difficulty in learning for which party the vote was cast. The buying of votes, both before and at election, was very much more common than it is now. Often election returns were tampered with. These and other abuses have been largely abolished, because the public has been aroused to the magnitude of the wrong and has insisted upon better laws and a strict enforcement of them.

Among the means used to prevent bribery of voters, especially prominent are the "corrupt practices acts," which require the different candidates to file with the state secretaries of state or county clerks after election, a complete statement of all money they have expended. Some party committees voluntarily publish reports of their receipts and expenditures, because of the popular opposition to the abuses of an earlier day.

**35. Responsibility and Removal of Elected Officials.**—All popular governments should provide adequate means not only for the full and free expression of the popular wishes in elections, but for enforcing a proper amount of responsibility among public officials. The chief dependence in times past has been on *short terms* and *frequent elections*. These have acted as a check on prolonged abuse of powers, giving the people opportunity to replace inefficient or unworthy public servants.

Laws exist for the national government and in most of the States which provide for the removal of officials guilty of open *bribery* or other forms of *corruption*. That these

Hart, *Actual Gov't*, § 41.

McCook, J. J., in *Forum*, 14 (1892), 1-13, 159-177.

Corrupt practices acts.

Fuller, *Gov't by People*, 138-162.

Checks in elections.

Removal of law breakers.

have been applied with some slight success is shown by the removal and imprisonment of several congressmen, of legislators in a few States, and of mayors and a few other elected officials in cities that were governed badly.

Removal  
of corrupt  
officials.

When an official *grossly betrays public interests* intrusted to his charge, even though he is not guilty of law breaking except by violating his oath of office, resignations are sometimes, though not often, obtained through the pressure of public opinion. Valuable as *public sentiment* may be in enforcing responsibility — and it is undoubtedly the strongest force that can be exerted — it usually fails to prevent the continuance of the worst forms of misgovernment, unless the law covers the offense committed and the courts apply the penalty without fear or favor.

The  
"recall."

Schaffner,  
M. A., in *Pol.*  
*Sci. Rev.*, 2  
(1907), 39-41.

A comparatively new means of forcing *elected* officials to observe the wishes of their constituents is the "*recall*." When an official has failed to do as his people wished, the recall permits a certain percentage of the voters in his district to ask for another election in which the incumbent must compete on equal terms with other candidates if he wishes to retain his position for the remainder of the term for which he was elected originally. The recall has not been adopted extensively, but is an effective although rather dangerous instrument for enforcing responsibility. The problem would be less serious than it is, if more care and interest were taken in selecting officials.

## THE WORK OF THE POLITICAL PARTIES

The political  
party as  
an organ of  
our govern-  
ment.

**36. The Importance of Party Activities.** — The importance of the work done through the political parties must be apparent from the preceding sections, for government in the United States means government by the people to a large extent *acting through political parties*. The electors must organize not only to nominate candidates, but to secure their election, and the political party has furnished the

best form of permanent organization for those persons who hold the same views on public questions or who desire to act together. It would be impossible for the American people to govern our country without some means like political parties for developing and expressing public sentiment as well as for the great task of filling the numerous public offices. The parties have done and are now doing an inestimable service in uniting the people, in preventing state isolation and sectionalism, and by creating a spirit of harmony in the actual working relations of state and national governments — the two great divisions of our federal system (§ 12).

In order to perform its important work in connection with the selection of public officials, each party maintains a permanent organization consisting of *committees*, and temporary nominating bodies called *primaries* or *conventions*. As we have already observed how primaries and conventions are composed, and what methods they use in nominating candidates (§§ 24–26), we need consider only the party committees.

**37. The Permanent Party Committees** are composed of representatives elected by the members of the parties for terms of two to four years. The ward committees, the city committees, and the county committees are supposed to be chosen in the primaries, while the members of the state committees are selected by county conventions. The *national* committees of each party consist of one member from each State, elected by the delegates from that State to the national conventions which nominate candidates for President and Vice President. *Reëlection* of committeemen is the rule, so that the committees are more permanent bodies than our county boards or state legislatures. As these committees may hold sessions at any time, and as the local committees usually act in connection with the state and national committees, each party has an organization of considerable power and efficiency.

Party  
organiza-  
tion.

Hart, *Actual  
Gov't*, § 44.

Composi-  
tion of  
political  
party com-  
mittees.

Bryce, *Am.  
Common-  
wealth*,  
II, 78–79.

Executive  
committees.

Just before each important election, special *executive committees* are appointed to take charge of the campaigns. These may be sub-committees of the permanent committees, or they may represent the candidates or even the leading candidate exclusively. They seldom hamper the regular committees, for political parties, as a rule, subdivide the work to be done and secure the coöperation of their different organizations in such a way as to obtain a maximum of results.

Macy, *Party  
Organization*, 80-82.

Work in  
connection  
with pri-  
maries.

**38. The Work of the Party Committees** includes the calling of primaries and conventions, and the management of the conventions and election campaigns. They decide what voters shall be allowed to attend any "regular" primary, frequently using this power to *exclude members* of their own party who oppose the wishes of the committees. They usually propose to the primaries lists of names, popularly known as "*slates*," and use every means to secure the election of these men as delegates. Conventions are frequently dominated by the committees in the same way, especially when a committee is working for itself and not for the party. During the *campaign*, the committees are very active both before election and on election day, in securing votes for the party candidates. Because of the completeness of the committee organization, and the harmony with which the party works together, the whole system of party committees is frequently known as the "*machine*."

Bryce, *Am.  
Common-  
wealth*, II,  
80-83.

Party  
finance.

The task of raising money which is assigned to the campaign committees often taxes the utmost ingenuity of the party managers. Formerly, speakers and other partisan workers gave their services expecting to be repaid by offices, if the party was successful, but the gradual abandonment of the spoils system (§ 43) has compelled a change of methods. A generation ago an important source to party revenue was the enforced contributions which all officeholders were required to give—a custom broken up by the first attacks on the spoils system. *Revenue* to-day comes

Macy, *Party  
Organization*,  
218-229.

*World's  
Work*,  
1 (1900),  
77-81.

chiefly from disinterested party men of considerable public spirit, from the candidates, who expend less personally than through the committees, and from men or corporations whose interests might be affected by the success of the party. Many corporations contribute to the treasuries of both great parties, and are therefore in a position to ask favors in any event. The legitimate *expenses* of some campaigns are enormous, the expenditures of the national committees reaching the millions and occasionally covering eight figures. Frequently some money is used for the corruption of voters, especially in great cities with a large foreign population.

Woodburn,  
*Pol. Parties*  
266-274.

**39. The Parties and Public Office.**—As public office is the chief goal of party effort, the success of our republican government depends to a great extent on (1) whether the party organizations depend on the rank and file of the party voters, and (2) whether the “machine” uses proper methods. If the party managers nullify the will of the party in *any* of the three vital stages of popular *election*—the primary, the convention, or the election—there is no longer truly popular government. Little is gained by the enactment of good election laws, if few voters are allowed to attend the primaries, if the primaries are “packed,” or a machine “slate” is “railroaded” through a nominating convention. Efforts have been made in recent years to make the party more truly representative of the people by passing primary election laws and direct nomination laws which place primary elections under the direct supervision of the government, but, as no scheme is self-operating, and as organized effort is essential for success under any conditions, good government and popular government do not necessarily follow these reforms in the methods used.

Parties and  
elective  
office.

Dallinger,  
*Nomina-  
tions for  
Elective  
Office*,  
121-137.

An inducement even greater than that offered by elective office, because less subject to popular control, is that presented by the large number of *appointive positions*. More than 100,000 national offices are filled without consulting

Parties and  
appointive  
office.

Bryce, *Am. Common-wealth*, II, 125-134.

the National Civil Service Commission (§ 44). Fewer than 100,000 regular paid officials are elected by the voters in our States, counties, cities, and towns, and other local districts, but probably between 250,000 and 300,000 persons besides those in the schools are appointed in these same governments, very few of whom are selected solely or chiefly because of ability. Thus, at present, *patronage* running up into hundreds of millions a year is the reward not so much of the persons elected as of the power behind the throne—the machine. The immense influence wielded because of the control over so many places, coupled with the advantages that may be derived from *expending one billion dollars* a year for other purposes, has developed and maintained the machine organization. The temptation to turn these party organizations into close corporations has, consequently, been too strong to be resisted, except in the rural districts and a few cities, so that the committees that were meant to serve their party have more often come to dominate it.

“Rings.”

Hart, *Actual Gov't*, 98-100.

Bryce, *Am. Common-wealth*, II, 103, 106-108, 111-114.

\* 40. **Bosses and Rings.**—This misuse of power in dominating appointments and elections, as well as in the making of laws, is the *great danger of popular government* through parties. Organization is essential for carrying on the work. Success may require and usually does require that the organization be so complete that it responds quickly to the commands of its managers, as any army does to the orders of its general. If the managers form a “clique” determined to use the party organization for selfish ends, these partisan dictators form what is called a “ring.” A striking instance of the enormous power that may be wielded by a ring is given by the famous Tweed Ring, which controlled the government of New York City for several years, during which more than \$100,000,000 from the city treasury was wasted or stolen.

The “boss.”

“In a ring there is usually some one person who holds more strings in his hand than do the others. . . . His

superior skill, courage, and force of will make him, as such gifts always do make their possessor, dominant among his fellows. An army led by a council seldom conquers; it must have a commander-in-chief who settles disputes, decides in emergencies, inspires fear or attachment. The head of the ring is such a general. He dispenses places, rewards the loyal, punishes the mutinous, concocts schemes, negotiates treaties. He generally avoids publicity, preferring the substance to the pomp of power, and is all the more dangerous because he sits, like a spider, hidden in the midst of his web. He is a *boss*.”<sup>1</sup> Boss rule is chiefly objectionable because it represents an extreme concentration of power, with comparatively little chance of enforcing responsibility, although in the long run no boss can maintain his position in the face of popular opposition.

Hart, *Actual Gov't*, 100-103.

Bryce, *Am. Commonwealth*, II, 104-106, 108-111.

**41. The Voter and Political Parties.**—Every voter must decide for himself several important questions regarding his relation to the political parties. Shall he remain independent of all the parties, voting first with one and then with another, or shall he identify himself with one party? Will it be best for him to vote always with his party? If not, when shall he espouse the cause of his political opponents, or vote for some other candidates? Many earnest citizens believe that, by holding aloof from all parties, they can be independent and vote for the best candidates without prejudice. They, of course, are debarred from taking part in the primaries of any party, as they belong to none. Some corrupt men also neglect to ally themselves with any party, but vote for the one which offers them the best inducement at a particular election.

The question of independent voting.

Macy, *Party Organization*, 265-270.

Woodburn, *Pol. Parties*, 295-303.

The *majority* of the voters, however, are party men, some of whom are bound to their party by the strongest of all ties, those of sentiment. Many of these men believe in the motto, “our party, right or wrong,” and support it at all times and under all circumstances, even when the nominees

Partisan voters in general and local elections.

<sup>1</sup> Bryce, *American Commonwealth*, 2d ed., II, 104.

are unfit men acting as the tools of dishonest politicians. Most party men are undoubtedly willing to "scratch" their tickets, that is, to refuse their votes for a man whom they consider unworthy, although in most cases they will vote a "straight" ticket—supporting every candidate of their party. Among men who vote a straight ticket at national elections and even at state elections, there is a decided movement toward *voting independently in local elections*. They think that in state and national elections it is necessary to uphold the party's policy, but that when municipal or county officials are chosen, the question of the individual fitness of the candidates is the thing that must be considered first.

#### THE APPOINTMENT OF PUBLIC OFFICIALS

Methods  
and needs in  
appoint-  
ment.

**42. Appointments and Removals.**—In none of our governments are all *officials* selected by popular vote, but the majority of the persons who hold office through appointment are *employees* rather than officials, although many who have duties of the greatest importance are appointed. A few of these appointed persons are connected with the legislative branch of the government, a larger number belong to the judiciary, but an overwhelming majority have executive or administrative duties.<sup>1</sup> Almost all high officials are chosen by the *chief executive* of the government to which the position belongs, that is, by the President, governor, or mayor, with the advice and consent of the national or state *senate* or of the city council. This *division of responsibility* frequently leads to real appointment by some member of the legislative body instead of by the chief executive, so that no blame can be attached for poor selections and no credit given for meritorious appointments. Less important places are filled either by the head of the department or

<sup>1</sup> The term *administrative* will be used as practically synonymous with the word *executive*, although it refers to subjects like finance, education, or public improvement, which involve the execution of law very little, but its application to a marked degree.



bureau in which the person is employed, or by special civil service commissions. Two requirements are usually demanded of persons in an administrative position: (1) special fitness to perform the duties of his office; (2) willingness and ability to coöperate with others in his department in order that by working together results may be obtained.

Terms of appointive office are usually short or indefinite. Removals.  
In order that the head of each government may have a set of workers dependent on him, who will carry out his plans and policy, he or his subordinates frequently have the right to remove persons whom they appoint. *The power of removal is essential to efficient, responsible government, but its abuse opens the way to the worst features of bad government.*

**43. The Spoils System.** — For over half a century, it has been the custom in the United States to change the whole corps of minor appointed officials and many of the employees whenever there has been a change in the elected head of any department of government, on the principle that "to the victors belong the spoils." The places made vacant by these removals have been filled by followers of the new chief, or by persons to whom he is indebted for partisan favors. This custom, popularly known as the "spoils system," has given us neither a skilled nor an efficient body of public servants, and has done so much harm to good government that a widespread demand for "civil service reform" has arisen. Use and objection.

The opponents of the "spoils system" have worked earnestly for the adoption of a system in which officials should be appointed and promoted, not by reason of *political influence*, but solely on *merit*. They have claimed and shown beyond question that it is not necessary for these appointed officials to hold any particular views on political questions, but that, on the contrary, only trained and competent persons can properly perform the duties of these positions. They have proved that the old system of compelling ap- The need of trained public servants.

Bryce, *Am. Commonwealth*, Chap. LXV.

pointed officials to give contributions of money and to work at the primaries and the polls for the heads of their departments or their partisan chiefs in order to retain their positions, was unjust to them and dangerous to a system of free elections.

Congress  
of reform.

Ashley, *Am.  
History*,  
§§ 400, 401.

Hart, *Actual  
Gov't*, §§ 71,  
94, 133-134.

The prob-  
lem of the  
best civil  
service.

**44. Civil Service Reform.**—The first real gain made by the reformers was in 1883, when Congress adopted the Pendleton bill, which provided for a *Civil Service Commission* of three members, not more than two of whom belong to the same political party. These commissioners are appointed by the President and Senate, and at first had power to examine candidates and make appointments to only a few positions. The number of places has increased so rapidly that about 200,000 of the 350,000 positions under the national government were in 1908 filled by the commission. Of the remainder, 60,000 are fourth-class postmasters. At first, an appointee of the commission might be removed by the head of his bureau, but it is customary now to permit removals only for cause, by the commission.

The work done by the national commission and by the commissions which have been established in some States and cities has been of inestimable benefit in removing the worst evils of the spoils system. They have demanded some real qualifications for each position, have made tenure of office depend on efficiency and not on continuance of partisan services, and have rewarded merit in *promotions*, as well as in original appointments.<sup>1</sup> It is maintained, often with some force, that the civil service examinations are impractical and do not determine fitness, that the service will become clogged with clerks who have outlived their usefulness, and that no chief can organize his force into a competent, unified corps of workers who will make an efficient organization of the department as a whole. Personality

<sup>1</sup> Appointments made by the commission are *provisional*, since the retention of the employees depends upon their ability to perform the duties assigned to them.

and ability to coöperate with a chief are qualities that can never be determined by any set of rules. The best results will never be obtained until we can trust and depend on the judgment and integrity of the men whom we elect to manage our public affairs.

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8. The national committee. Macy, *Party Organization and Machinery*, 65-86.
9. State party organization. Macy, *Party Organization*, 96-110.
10. Political corruption and reform. Bryce, *American Commonwealth*, II, Chapters LXVII and LXVIII.

### Questions

1. Name the chief county officials that are chosen by popular vote; the town officials; the city officials. What important offices connected with each of these governments are filled by appointment?
2. Learn, if possible, how many primaries were held by each political party last year in your precinct. Were they well attended?
3. Are direct primaries used in this State? If so, for what offices? To what extent is the method used *now* for local officials? for State officials? for U. S. senators (compare § 301)?
4. In what voting precinct do you live? Give its boundaries. Where is the usual polling place? How many votes were cast within the precinct at the last election?
5. Who may vote in this State? What classes of persons are expressly excluded from voting? What length of residence for voters is required in the precinct? in the county? in the State?
6. On what day are congressmen elected? members of the state legislature? the governor of the State? the county officials? the mayor of the city? How long are the polls kept open?
7. Has a political party control of this State? of this city? What proportion of state legislators belong to each party? How long since any other party had a majority in your State? Do a fair proportion of the voters of your locality vote independently in local elections?
8. Is there a civil service commission in this State? in this city? Does either control many offices?

# PART I

## STATE AND LOCAL GOVERNMENT

### CHAPTER III

#### HISTORICAL DEVELOPMENT

**45. Introduction.** — The state and local governments that we have to-day are in *form* not very different from the governments which existed in the different colonies before we became independent of Great Britain. The chief difference is that whereas most of the officials were *appointed* then, they are now *elected*; that is, the governments have become more democratic. The beginning of the local governments can, however, be traced through many changes from the earliest semi-democratic Teutonic settlements in England. The most important periods for both the local and the central governments of the States were (1) the seventeenth century, in which English *local government* with important modifications was transplanted to America and the *colonial governments* were developed into real governments with distinct executive, legislative, and judicial departments; and (2) the changes in the half century following independence when the original States remodeled their old colonial governments and new States in the West adopted forms of local and central governments even more like those of the present.

Continuity of development.

Important periods of change.

#### LOCAL GOVERNMENT IN AMERICAN COLONIES

**46. Self-government in England (1600).<sup>1</sup>** — *The first colonists who came to America from the rural districts of England had been*

Self-government in the parishes.

<sup>1</sup> Before the Norman Conquest England was governed in *towns* by *town meetings* of all freemen able to bear arms, in *hundreds* composed of several towns, which had courts composed of *representatives* from the towns, and in *shires*, each of which had an alderman and a shire court composed of *representatives* from the hundreds. As the kings became more powerful, these local officials and bodies were no longer elected. The name *county* came into use in place of shire, while the *parishes* corresponded fairly well to the older towns.

Fiske, *Civil Government in U.S.*, 36-39. *accustomed to take a fairly active part in local government in their parishes before leaving the mother country.* In most of their parishes, those who paid rates or taxes were allowed to elect the parish officers, and to decide how much money should be expended within the parish.

Medley, *Eng. Const'l Hist.*, 400-404. The chief officials, called vestrymen, had charge of most local affairs, both church and secular. Besides these, however, there were local police officers known as constables, and the overseers of the poor, the latter being chosen quite frequently by the vestrymen.

County officials and government. Since the king appointed most of the *county* officers, the people had much less to do with the government of the English counties than with that of the parishes. The chief officials were the *sheriff*, who executed the decrees of the courts and attended to financial matters; the *lord-*

Fiske, *Civil Gov't in U.S.*, 50-53. *lieutenant*, who was the king's military representative in the county, and in charge of the militia; and the *justices of the peace*, who not only had the power to try cases as a court or as individual justices, but made local laws, looked after the highways and bridges, and super-

Medley, *Eng. Const'l Hist.*, 392-400. *vised the action of the parish authorities.* On account of the number of its tasks, the government of the counties was of the greatest importance, but *the people had practically no share in the county government*, although the king usually selected the officials from the landholding aristocracy of the respective counties.

Influence of the geography upon government. **47. The Early Settlements in Virginia.**—The first permanent English settlements in America were made in what is now the State of Virginia, beginning in 1607. It was not long before the growing of tobacco became the chief industry of the colony. As the valleys were broad and fertile, and slow-flowing, navigable rivers were numerous, each tobacco plantation had its own wharf from which its tobacco could be shipped direct to England. Towns were therefore small and few in number, the population being scattered over a wide area. This produced two important results. (1) Since people did not live close together, county government was necessary, whereas parish government was not, and *the county government was practically modeled after that of England*, with justices of the peace and sheriffs appointed by the governor instead of the king, the government was very undemocratic in character. (2) The large estates developed an aristocracy of landowners, who in time gained the right to nominate certain persons for vacancies in the county offices, the governors selecting one of the nominees.

Hinsdale, *Am. Gov't*, §§ 74-79. **48. The Local Government established in Massachusetts.**—Massachusetts and, in fact, most of New England was settled by Puritans who came to this country in order that they might escape the arbitrary government of Charles I and his ministers. Between 1630

Mace, *Method in History*, 93-103.

Puritan migration and government.

and 1640 the Church of England tried to make the methods of conducting church services more elaborate and more uniform throughout England. This was so distasteful to the Puritans that many entire congregations emigrated to America. On the shores of the numerous Massachusetts harbors, or in the narrow valleys, these congregations located, each with a settlement of its own. The homes of the members were clustered around the meeting-house, and all were surrounded by a stockade to protect them from the Indians. Town meetings were held frequently at the church to look after both religious and town business, all of the church members being allowed to take part. So *these Massachusetts towns were from the first little democracies, in which each man had a voice and a vote* in regard to subjects so dissimilar as the election of a pastor and the building of a bridge. Their government in colonial times was not greatly different from that of the New England towns to-day (§ 63).

**49. The Township-county Government of the Middle Colonies.** — The middle colonies either came under English rule or were settled so much later than those of New England and the South that their local government was largely an imitation of and a combination of those in use to the north and south of them. In New York, the colony was divided into counties before townships were created. The latter had town officers and town meetings, but many of the duties performed in New England by the selectmen were in *New York assigned to a county board composed of one supervisor elected from each township.*

In *Pennsylvania*, the township was introduced even later than in New York. It never obtained a very strong hold, for most of the duties connected with local government were intrusted to a board of three *county commissioners* elected by the voters of the whole county — the only really democratic county government of colonial times.

## THE CENTRAL GOVERNMENT OF THE COLONIES

**50. Classes of Colonies.** — There were three classes of English colonies in America: (1) the *Royal*, in which the governor was appointed directly by the King, and over which the King had direct and very great control; (2) the *Proprietary*, the governors of which were selected by proprietors, to whom the King had granted the land within the colony and certain privileges over its government; and (3) the *Charter* colonies, each of which continued to be governed in accordance with charters given them by English kings. The two purely charter colonies — Connecticut and Rhode Island — were virtually

Mace,  
*Method in History*,  
86-93.

Fiske, *Civil Gov't*, 16-31.

The New York supervisor system.

Goodnow,  
*Administrative Law*,  
I, 178-185.

The Pennsylvania commissioner system.  
Howard,  
*Local Const'l Hist.*,  
373-387.

The three classes of colonies.

little republics, for the people elected the governors as well as the legislatures, whereas in the other colonies, the upper houses of the legislatures (except in Massachusetts), the governors, and the judges were chosen without consulting the people, and could not be removed or controlled by the people. Most of the colonies, however, had charters during the early part of their history, so that practically all had had some experience with these fundamental written laws which later grew into the written constitutions now found in all of the States.

Classifica-  
in 1760.

In 1760, the only pure Charter colonies were Connecticut and Rhode Island. Massachusetts approached the Charter form, but had a governor appointed by the Crown. Pennsylvania, Delaware, and Maryland were Proprietary; the rest were Royal.

Powers of  
the gov-  
ernor.

Greene,  
*Prov. Gov-  
ernor*, 202-  
205.

Hart, *Con-  
temporaries*,  
II, Nos. 54-  
60, 65-66.

**51. The Colonial Government.**—The powers of the *governor* varied considerably in the different colonies, being greater in the *Royal* than in the Charter colonies. He had very great power in legislation, for he usually appointed the upper house of the legislature, and might be able to decide how many members each county or town should send to the lower or popular house of the legislature. Moreover, he had at all times an absolute veto upon any bills passed by both houses. He usually summoned and dissolved the legislature. All judges and most other colonial officials were appointed by the governor. He had charge of the military forces, the disposal of public lands and of many other important subjects that we should now leave entirely to the legislature. These powers were theoretical rather than practical, especially during the later colonial period.

Term of the  
governor.

In the *Royal* and *Proprietary* colonies, the governors held office as long or as short a time as the King or proprietors wished, just as the judges of the same colonies held office during the pleasure of their respective governors. In the *Charter* colonies, the usual term for the governors was one year, but as reëlection was the rule, the governors remained in office longer than the ordinary royal representative.

Upper house  
of the  
legislature.

Except in three colonies,<sup>1</sup> the legislatures were composed of *two houses*. The upper houses, which were small, acted both as part of the legislatures and as governors' councils. In most of the colonies, the members of the upper houses were appointed by the governors, although in Connecticut and Rhode Island they were chosen by the people, and in Massachusetts by the lower house.

Lower house  
of the  
legislature.

The members of the *lower houses* of the legislatures, known as the assemblies, were *everywhere elected* for a term of one year by the voters of the colonies. Only a small proportion of the population voted at all, however, as the colonial laws required that a man be a

<sup>1</sup> Pennsylvania, Delaware, and Georgia.



Protestant and own quite a little real estate before he was given the elective franchise.

**52. The Development of the Colonial Assemblies.**—The assemblies formed the popular branch of the legislatures, and their struggle with the governors for power was of especial value in the development of our present state governments. The first assembly to meet in America was that of Virginia, composed of two representatives from each of eleven towns or plantations, and elected in 1619. This and the early assemblies of the other colonies sat at first with the governor's assistants, taking little part in the discussions, and only gradually exerting an influence upon the making of laws. In time, by asserting themselves, they gained the right to *sit apart* from the assistants and to vote separately upon all proposed laws. That is, each assembly formed a distinct house of the legislature. All obtained in addition the right to decide how much money should be raised by the colonies through *taxation*. Many of them tried also to gain the exclusive power to *expend money* as well as to raise it, and some of them succeeded. In Massachusetts, for example, the assembly refused to vote a regular salary for the governor of the colony, but passed each year a bill appropriating an amount for his expenses. Before the Revolutionary War these popular assemblies had made good their claim to a share in the colonial government not second to that of any other branch of that government.

Hart, *Contemporaries*, II, Nos. 61-63.

Struggles with the governors.

Thwaites, *Colonies*, §§ 123-126.

Greene, *Provincial America*, 194-200.

## CHANGES IN STATE AND LOCAL GOVERNMENT SINCE 1776

**53. The Transition from Colonial to State Government.**—When, in 1775, the colonies objected to the way in which Great Britain attempted to govern them, and war broke out between the colonies and the mother country, some of the more unpopular of the royal governors and other officials found it necessary to flee to loyal British possessions. The assemblies in those colonies applied to the Second Continental Congress, then in session (§ 177), asking what they should do. Congress advised them, and, later (May 10, 1776), advised all of the colonies, to *form complete governments* such as the people thought best suited to their needs. Acting on these suggestions, the assemblies either passed bills which arranged for new governments with which the King had nothing to do, or they asked the people to elect delegates to conventions whose sole work should be to make constitutions for the new States—for they were no longer colonies. Connecticut and Rhode Island simply kept the charters that they had used for over a century, with slight but necessary modifications, the former not adopting a new constitution until 1818, nor the latter until 1842.

Need of new governments (1775-1776).

Van Tyne, *Am. Revolution*, 136-142.

Frothingham, *Rise of the Republic*, 491-499.

Influences affecting the constitutions.

Fiske, *Critical Period*, 65-69.

Van Tyne, *Am. Revolution*, 142-152.

**54. The State Constitutions.**—The *conventions* called to frame constitutions for the new States had no models to guide them in their work except the *colonial charters*. It was natural, then, that they should copy the charters to some extent, and that they should provide for governments like those to which they had been accustomed, giving their trusted assemblies the power which the King had formerly exercised of appointing the governors, and leaving the selection of judges as well to the legislatures. Having completed the constitutions, the conventions declared the constitutions to be in force, and adjourned. Virginia was the first State to be dissatisfied with such a constitution, for a week before the Continental Congress passed the Declaration of Independence (July 4, 1776), her convention adopted a constitution, including a *bill of the rights of individuals* with which the new government should never interfere, and a declaration of independence, as well as a frame of government. Almost all of the later constitutional conventions of the Revolutionary period followed her example by adopting bills of rights in addition to articles setting forth the form and powers of the departments of government. For Massachusetts, the home of the town meeting, the convention went even farther, and *submitted the completed constitution to the voters* of the State for their ratification, thus giving the people a real share in the work of constitution making. This practice came into use in most of the States after 1820.

Restrictions placed on legislatures.

Schouler, *Const'l Studies*, 249-265.

**55. Changes in the State Governments.**—In 1776, the people were afraid to trust their governors and judges, because of the experience they had had with those officials in colonial times, so they gave the legislatures extraordinary powers. At first no law passed by a legislature could be vetoed by a governor. To the legislatures was also intrusted almost the whole power of appointing public officials. *The history of the state legislatures since the Revolution is to a large extent the history of the restrictions placed upon the lawmaking body.* The people soon saw the necessity of some check such as a veto; but instead of giving the governors the power to entirely prevent bills from becoming laws, as was possible in colonial times, they allowed two thirds or three fourths of the members in each house of the legislature to pass bills over the governor's veto. The legislature's power has been still further decreased by forbidding the passage of laws which apply to a single locality or to one person, ordinarily called local and special laws (§ 90).

Changes in the executive department.

The governors and their assistants, on the contrary, are being given a constantly greater part in the work of the state government. All of these officials were at first chosen by the legislatures except in the New

England States, in which the governors were elected by the people. Before 1830, however, *popular election* of the governors became customary, and since the middle of the nineteenth century the universal practice has been to elect the secretaries of state, the controllers, and other executive officials at the same time as the governor. Schouler, *Const'l Studies*, 267-282.

The change from an *appointive* judiciary, which prevailed everywhere during the eighteenth century, to the *elective* one of the present, was much slower and less complete than in the case of the executive officials. Many of the older States still have some of their judges appointed by the governors, or the legislatures. But very few States retain the older custom of selecting judges for good behavior, the terms in a majority of the States seldom exceeding ten years for the justices of even the highest courts. Creation of an elective judiciary. Schouler, *Const'l Studies*, 283-292.

**56. Influences affecting the Local Government established in the Newer States.**— There are three important influences which have affected the kind of local government that has been adopted in the Western States. (1) Most of the West has been settled by people from the Eastern States, who naturally favored the system of local government to which they had been accustomed. As the *migrations ordinarily followed the parallels of latitude*, the Southwest adopted the county form of government and the Middle West one with both townships and counties. Original home of settlers. Turner, *New West*, 67-83.

(2) At the beginning, villages were nowhere numerous, as the first settlers of the West were farmers living upon separate farms of considerable area. *With such a scattered population, county government was the only feasible one*, even for the men of New England, until enough persons were living within a small district to make town government possible. We find, therefore, that in States like Illinois, Iowa, and Nebraska, there was at first no attempt to establish township government, but later the more populous sections were allowed to organize township governments wherever the majority of the voters within the township desired. Density of population. Howard, *Local Const'l Hist.*, 135-156.

(3) The third influence that has affected Western local government is the *congressional township*. Almost all of the land in the newer States was once under the control of Congress, which had it surveyed into townships six miles square, each of which was composed of thirty-six sections (§ 279). One or two of these sections in each township were given to the States by Congress for the support of schools in the township. In fact, the congressional townships were often made school districts with school officers elected at school meetings, which were like town meetings, only less important. Later, road commissioners and overseers of the poor were chosen by the voters of the congressional Self-government in congressional townships. Fiske, *Civil Gov't*, 81-88.

Strong and  
Shafer,  
*Gov't of Am.  
People.* township to look after its highways and its paupers. From this modest beginning, *the congressional township has in many States developed a real town government with a town board, assessors, clerk, and other officers.*

### General References

- Strong and Shafer, *Government of the American People*, pp. 1-42.  
Fiske, *Civil Government in the United States*, pp. 16-98.  
Hinsdale, *The American Government*, pp. 25-63.  
Fairlie, *Local Government in Counties, Towns, and Villages*, pp. 3-56.  
Channing, *Town and County Government in the Colonies*, in John Hopkins University Studies, II, pp. 437-489.  
Howard, *Local Constitutional History of the United States*, especially pp. 18-62, 135-162, 298-314, 358-426, 458-473.  
Thorpe, *Constitutional History of the American People*, I, pp. 60-132; II, pp. 395-501.  
Schouler, *Constitutional Studies*, pp. 9-69, 220-295.





ALLEGHENY COUNTY COURTHOUSE, PITTSBURG, PA.



CITY HALL, ST. LOUIS, MO.

## CHAPTER IV

### TOWN AND COUNTY GOVERNMENT

**57. Local Government in the United States.** — At the present time, we have three types of local government in the United States: (1) the *town* type, (2) the *county* type, and (3) the *compromise* type. In the six New England States, the town with its town meetings still looks after all of the important local needs of the inhabitants. In the South, the counties and their officials take full charge of local affairs, for many of the counties are scarcely subdivided even into school districts. But in the majority of the States, the compromise system prevails, each county having townships with a few unimportant duties, while all of the other local public business is transacted by the county officers.

The three types of local government.

Hart, *Actual Gov't*, §§ 83, 84.

Macy, *Civil Gov't*, 107, 112-114.

In studying local government, we must not forget that our local governments are but parts of the systems of state government. *The local governments derive their authority, not from the people of the localities, but from the people of the whole State.* The local governments are, therefore, one set of agents carrying out the wishes of the people of the States; the other set of agents being the central governments of the States. Our local governments are chiefly occupied with the administration of laws made by the state legislature and of ordinances passed by the county and town boards. Few of the local officials are called upon to deal with great questions of public policy, but all are obliged to devote their attention to a multitude of details in caring for the health of the people, in laying out roads and construct-

Interdependence of state and local governments.

Local officials have numerous administrative duties.

Bryce, *Am. Commonwealth*, abr. ed., 413-416.

ing bridges, in maintaining public schools, in arresting and punishing law breakers, in keeping records of all public business, besides looking after numerous other matters of more or less importance.

## COUNTY GOVERNMENT

A political subdivision of a State.

**58. The Character of the County.** — Every State is divided into areas called counties, of a size suitable for applying state laws. In a new State the location of county boundary lines is arranged by the legislature. After boundaries have once been fixed and the county seats selected, a legislature cannot arbitrarily move a county seat nor divide a county into two or more counties, as the population becomes more dense, but must first obtain the consent of the voters of the original county to the change.

Counties are public corporations.

Fairlie, *Local Gov't*, 64-65.

In order that public business may be transacted, power is given the counties as *public corporations* to acquire land at the county seat for the erection of a courthouse, a county jail, and other necessary buildings, to assess and collect certain kinds of taxes, to collect their debts and enforce demands by bringing suit against individuals or private corporations, and to sustain suits if any one has a claim against them.

The Southern County.

As townships do not exist in the South, or are of so little importance that they are scarcely worth considering, the county officials are obliged to look after matters left in the other States to both the towns and the counties. This task is made easier by the small size of the Southern county. In Kentucky, for example, the average area of the 119 counties is less than 340 square miles, while in Minnesota the average county is three times as large.

Fairlie, *Local Gov't*, 57-63.

County officials in the South.

Just as in Virginia in colonial times, the chief county officers in some of the Southern States are justices of the peace, who are judges at one time and who form a county board at another. Most of the Southern counties, however, are now governed as in most of the other States by commissioners, aided by sheriffs, county clerks, assessors, tax collectors, treasurers, and others. The duties of officials bearing these names are much the same in the South, the North, and the West, for only in New England, where the counties are overshadowed by the towns, is the work of the county unimportant.

Importance of elective system.

**59. The Selection of County Officials.** — It is difficult for us to realize now that less than a century ago, almost if not quite all of the county officials were appointed by either the governors or the legislatures. Nowadays the important places are filled by popular vote, and



the lesser positions through appointment by the people's elected representatives. The state government usually decides what county offices there shall be, what duties belong to each, and what salary each carries with it, but it cannot interfere with the people's choice of their officials. Because of the *administration of practically all of our state and local laws by local officials*, our counties have a large degree of freedom in deciding how severely they shall enforce any state laws. This possibility gives them what is usually considered the most vital form of *local self-government* in existence. This is made possible by the system of local elections with responsibility to the people of the locality alone.

Almost all of the officials mentioned in the following sections are elected by the legal voters of the county for periods of two, three, or four years. Their compensation varies greatly in different parts of the country, but is on the whole more liberal in proportion to the magnitude of their duties than is that of the state officials.

Ashley, *Am. Fed. State*, §§ 467-469.

Terms and compensation of county officials.

✓ **60. The County Board.**—Every county has a supervisory body which makes most of the county ordinances and oversees the actions of the other officials. The members of the county board may be known as *commissioners*, *supervisors*, *justices of the peace*, or by other names. They usually number only three or five, and are elected either from the whole county, from districts into which the county is divided for the purpose, or in some States from the townships. As a board their *chief duties* are to divide the county into school and road districts and even into townships, to lay out public highways, to construct bridges, to look after the poor, to erect public buildings, and, most important of all, to determine the amount of money needed by themselves and others to do the work of the county, and to supervise its expenditure.

Composition and duties.

Fairlie, *Local Gov't*, 75-94.

**61. Other County Officials.**—There are ordinarily county *judges* who are really state officials (§ 93), although elected by the voters of each county. The decisions of these judges, and of all higher state courts, that must be executed within the county, are carried into effect by the *sheriff*, who, by virtue of this duty and the more general one of maintaining peace and order, is the most powerful of the county officials.

Judges and sheriff.

Fairlie, *Local Gov't*, 95-100, 106-112.

Financial  
officials.

Fairlie,  
*Local Gov't*,  
119-127.

Most of the revenue needed to maintain the government of an American county is derived from the general property tax (§§ 149-152). This is usually assessed by township assessors, but is paid to county tax *collectors*. When collected, the tax money is turned over to the *treasurer*, who places certain amounts in the general fund, in the highway fund, the school fund, and various others, in accordance with instructions from the county board. This is not paid out except upon written order from the *auditor*, or of the county clerk in some States. If a school janitor is to be paid, he first receives from the school trustees a warrant or demand which will be cashed by the treasurer when the auditor indorses it, or issues for it a new demand.

Other  
county  
officials.

Fairlie,  
*Local Gov't*,  
100-106,  
112-118,  
127-140.

The records of the county board, the proceedings of the courts, and other official papers are preserved by the *county clerk*. When a suit in which the county is interested, or a criminal case is being tried in the county courts, the interests of the county are represented by the *attorney* or his assistants. Upon the county *superintendent of schools* devolves the task of visiting schools and regulating the county school system, and often of superintending the distribution of school moneys. The *coroner*, with the aid of a jury, investigates the causes of violent or mysterious deaths. All deeds, mortgages, and other business papers for whose validity a record is necessary, are copied by the *recorder*. Many States have county surveyors to look after the public lands, separate overseers of the poor, public administrators who take charge of the estates of persons dying without wills, and other officials.

## TOWN GOVERNMENT

Two types  
of town  
government.

**62. General Character of the Town.** — There are in the United States two distinct kinds of towns. One of these does much or most of the work consigned by the state government to the localities, and is a public corporation, with the right to do business in the courts and outside in a corporate capacity. The other, more often called a town-

ship, has so few duties that it is scarcely considered necessary to grant it the power of a corporation, as it is merely a convenient area for the lowest courts and possibly for school or tax purposes. The first type of town is found fully developed only in New England; the second exists most commonly in the extreme West and in some of the Southern States.

**63. New England Town Government.** — The essential feature of New England town government is the mass meeting of the voters, held at least once a year in the town hall. At the *town meeting* the men elect public officers, vote taxes, authorize important enterprises, and express approval or disapproval of the acts of the town officials during the preceding year. The voting citizens are thus enabled to keep in close touch with the public activities of the town and to insure a careful if not a successful management of public affairs.

The town officials in New England at least are very numerous, as the town must perform work that in other sections is left to the county. The town in its corporate capacity is represented during the intervals between town meetings by the *selectmen*, who have general oversight of town affairs. They number three or nine, and are elected usually for three years, but sometimes for only one. Next to them in authority are the members of the school committee, one third of whom retire each year. As most of the state and local taxes are collected in the towns, the assessors hold very responsible positions, while the tax collector, the auditor, and treasurer, the town clerk, and the constable, who are elected yearly at town meetings, are equally well occupied. To the overseers of the poor and to the overseers of the highways are assigned duties performed in most of the States by the county boards and their assistants.

**64. The Townships outside of New England** — In New York and in two or three of the Northwestern States, town meetings are held usually for the election of officials, but the duties and powers of the meetings are exceedingly limited, although the town officials may be numerous and their powers quite extensive.

Town meeting.

MacDonald,  
*Gov't of*  
*Maine*, § 30.

Fairlie,  
*Local Gov't*,  
147-156.

Hart, *Actual Gov't*,  
§ 82.

New Eng-  
land town  
officials.

MacDonald,  
*Gov't of*  
*Maine*, § 30.

Hart, *Actual Gov't*,  
§ 82.

Fairlie,  
*Local Gov't*,  
156-163.

The New  
York town.

Morey,  
*Gov't of*  
*New York*,  
§ 39.

Western and Southern towns. Siebert, *Gov't of Ohio*, § 39. Greene, *Gov't of Illinois*, § 38. Fairlie, *Local Gov't*, 164-185.

In the other States, when townships exist at all, they are usually districts with judicial officers, constables, overseers of the highways, and school boards only. As already stated, in most of the newer States these townships coincide in area with the rectangular congressional townships, whose evolution as a self-governing district was described in § 48. In some parts of the United States, moreover, there are no important political divisions of the counties except the school districts. These may have overseers of the poor and the highways, as well as school trustees, and are after all undeveloped towns in fact if not in name.

Purely local duties.

Ford, *Amer. Citizen's Manual*, 53-56.

Local administration of general state laws.

**65. The Work of Rural Local Government.**—Town and county officials have *double duties* to perform, as they care for all of the purely *local* interests of their town or county, and, in addition, administer almost all *state* laws within their boundaries. Under the former head come all local improvements which are not of especial interest to those outside of their locality, such as the construction of local public buildings, and the laying out of purely local roads, measures to prevent the public health from purely local dangers, and the enforcement of such local ordinances as may be needed.

A very much greater amount of work is performed in carrying into effect state laws. These state laws are usually *general* and may be modified frequently to meet local needs. The schools furnish a good example of this combined action of the State and the localities; for, while the State creates a state *school* system, in the administration of the general state law each locality is able to establish schools that meet the wishes of its people (§§ 123-126). Most laws in regard to *crime* and the punishment of crime are made by the State and enforced by local police officers and judges (§§ 107, 112, 113). Except for the most serious crimes, offenders are punished in local jails or other institutions (§ 116). Most States have general laws on the subject of *liquor license*, but more than one half permit the towns or counties to decide for themselves whether they will have saloons (§§ 134, 135). In many States, there are laws for the care of the *poor*, but

little attempt is made by the state authorities to administer such laws (§§ 127-131).

It has been the custom to allow each locality to administer these general laws in the way that seemed best without much attempt to obtain uniform results in different counties of a State. Local pride and interest can be counted on usually to establish as good a school system as each community can afford. Few towns will neglect to preserve order. In many respects, however, the best results cannot be obtained unless the local officials are supervised by state authorities. For example, many States have improved their school systems by withholding state school funds from the localities if they fail to reach a certain minimum of efficiency. There has been a decided tendency in recent years to increase state supervision of local activities.

Increase in amount of state supervision.

### General References

- Wilson, *The State*, §§ 1209-1259.  
 Hart, *Actual Government*, pp. 167-179.  
 Bryce, *American Commonwealth*, I, Chaps. 48, 49.  
 Macy, *Civil Government*, pp. 41-114.  
 Ford, *American Citizen's Manual*, pp. 53-83.  
 Howard, *Local Constitutional History of the United States*, especially pp. 162-238, 438-470.  
 Fairlie, *Local Government in Counties, Towns, and Villages*.

### Topic

THE NEW ENGLAND TOWN: Channing, *Town and County Government in the Colonies*, Johns Hopkins University Studies, II, pp. 459-474; De Tocqueville, *Democracy in America*, I, pp. 74-86; Howard, *Local Constitutional History*, pp. 62-99.

### Questions

1. What is the difference between a private corporation and a public one? (Dole, *Talks about Law*, pp. 251-253.)
2. How many counties are there in this State? How do they compare in area and population?
3. In what county do we live? What is its area? its population

by the last census ? What is the county seat ? Is it centrally located ? Is it the largest city in the county ?

4. What name is given to our county board ? How many members are there on it ? Are they chosen in towns, in districts, or from the whole county ? Name their principal powers.

5. What is the term of the elected county officials ? Are all chosen at the same time ? Are any county officials appointed by the state government ?

6. What is the salary of the county clerk ? How long has he held the position ? Has he few or many assistants ? State as fully as possible his duties.

7. What is the main political subdivision of this county called ? How many are there in the county ? Are they public corporations ? What officers has each ? Do they ever hold meetings of all of the voters within the district ? If so, when and for what purpose ?

8. If living where the town is important, answer the following : What are the boundaries of our town ? its population ? What are the chief events in its history ? How often are town meetings held ? Give the composition and duties of the town board, stating term and salaries of the members. What other officials has the town ? Do the voters of the town elect any county official ?

9. Make a table in your notebooks, giving a list of the chief offices of the county, and showing for each the name of the present incumbent, the term of his office, and the salary he receives.

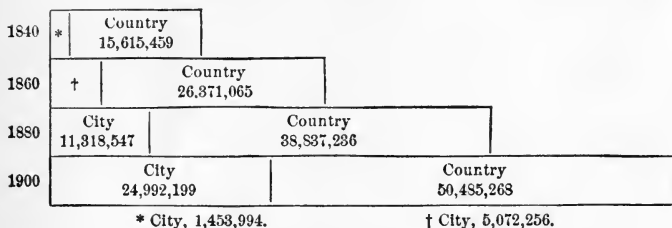
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## CHAPTER V

### CITY GOVERNMENT

**66. The Remarkable Growth of our Cities.<sup>1</sup>** — We can appreciate the importance of city government if we realize that one third of all the people of the United States live in cities of more than 8000 inhabitants, whereas twenty-five years ago less than one fifth of our population dwelt in cities. The chief motives influencing this migration to urban centers

Reasons for growth.



**DIAGRAM SHOWING GROWTH OF CITIES**  
(The city population includes incorporated places of 5000 or over.)

have been the increased opportunities of business advancement which a city offers, and the social and educational advantages found there. Because of the many calls which city life makes upon the time of its people, less chance is given the voters to interest themselves in the way the government is conducted. Since they do not become acquainted with their neighbors as in the country, the

Bullock (ed.),  
*Readings in  
Economics*,  
60-72.

<sup>1</sup> The term "city" is used in connection with fairly large urban communities. Many small Western places are dignified by the name "city," when they have no really urban conditions or problems.

Weber, A.F.,  
in *Annals*  
*Am. Acad.*  
*Pol. Sc.*,  
23 (1904),  
223-236.

Results of  
growth.

Rowe, *Prob-*  
*lems of City*  
*Gov't*,  
96-114.

candidates even for the ward offices are probably unknown to ninety-five per cent of the voters. The indifference of the people to city affairs, due to these causes, is increased by the lack of great public questions in connection with the municipal government. The vast number of details with which city officials are concerned, from their very complexity, make supervision of city administration by the voters all but impossible. It is well known that our city governments have often fallen into the hands of men whose sole business is "politics," and whose care for the public welfare is less marked than their devotion to private interests. This is the more unfortunate because the regulation of a city's business involves the expenditure of a much greater amount of money in proportion to the population than does that of the county, the State, or the national government, so that all citizens ought to be vitally interested in having their city's government as perfect as possible.

## ORGANIZATION OF CITY GOVERNMENT

How cities  
are incor-  
porated.

**67. City Charters.** — All cities are public corporations created under state municipal laws. Upon petition from a certain number of voters living within the district that desires a city government, a special election is called at which an opportunity is given to vote for or against *incorporation*. If the vote is favorable, the city obtains from the state government a charter under which it may elect its officials and conduct its business.

General  
charter  
laws.

For the sake of convenience, we may consider the granting of *charters* under three heads. (1) In most of the States, the legislature passes a series of charter laws for cities of different sizes. That is, forms of charters are enacted for different *classes of cities*. For instances, all cities whose population is more than 100,000 may be called cities of the first class, those having between 25,000 and 100,000, cities of the second class, and so on. All cities that, by

Parsons,  
*City for*  
*People*,  
415-427.



virtue of their population, are of the second class, have charters of the second class which may be amended or revoked in their entirety by the next legislature.

Rowe, *Problems of City Gov't*, 123-132.

(2) In other States, the charters are granted by *special* act, a custom once used almost universally. Instead of having different classes, each city is in a class by itself, and each charter is therefore different from every other, although all are given to the cities by the legislature and not adopted by popular vote.

Special charters.

(3) Six States, Missouri, California, Washington, Minnesota, Oklahoma, and Oregon, permit their *cities to elect charter committees*, which frame suitable charters. In some cases, these are in force as soon as they are approved by the voters of the cities; in others, they must be ratified by the state legislature.

Charters framed by citizens.

Oberholtzer, *Referendum*, 343-367.

The charters serve the same purpose for the cities that the constitutions do for the States (§ 160), that is, they are the *fundamental law* of the cities. The most important part deals with the frame of the government for the city, showing the composition and powers of the city council, as well as the term and duties of the mayor and other administrative officials.

Character of a city charter.

**68. The Organization of the Council.**—As a rule, the councils of our cities are small bodies of from ten to twenty members comprising a *single chamber*, although in about one city in four, there is a *second chamber*, just as in the state legislatures and in Congress. The members of the larger of these two bodies, and of the single chambers of the other cities, are elected from *wards* for a term of from one to four years. For the upper chamber, the members are usually chosen for longer terms, not exceeding four years, and are occasionally elected from the whole city, or from large districts, each of which elects several of these "aldermen." In many of the cities, the council, or at least one chamber of it, is a "continuous" body, one half of the members retiring at a time. In the majority of American municipali-

One-chamber councils the rule; two chambers the exception.

Goodnow, *City Gov't*, 154-161.

Conkling, *Mun. Gov't*, Chap. III.

Wilcox, *City Gov't*, 143-168.

ties councilmen serve without pay ; in the other cities their compensation ordinarily depends upon the number of sessions held.

Philadelphia has the largest council in the United States, its upper chamber numbering 47 and the lower 80. For the city and county of San Francisco, the only legislative body consists of 18 "supervisors."

Powers  
enumerated  
in the city  
charters.

Goodnow,  
*City Gov't*,  
161-175.

Wilcox,  
*City Gov't*,  
168-179.

**69. The Powers of the Council.**—The council is not allowed to exercise any power unless that particular power is mentioned in the city charter.<sup>1</sup> The list of *enumerated powers* is apt to be quite long, giving the council the right to construct public buildings and make *ordinances* for controlling the streets, preventing disorder, regulating licenses, caring for the health of the community, and for many other matters of local interest. The council is usually the *chief financial organ* of the city.<sup>2</sup> To it estimates of the expenses of the different departments are furnished, by it appropriations are voted, and provision made to meet the expenditures through taxation or other forms of revenue. When it becomes necessary to *borrow money*, the council is authorized to issue bonds for the necessary amount, although sometimes only after securing the approval of the voters. When companies apply for *franchises* to lay a street railway, or furnish telephone service or gas to the people, the applications are made to the council, but in some cities it is not permitted to grant franchises without first gaining the consent of the voters.

Suggested  
changes in  
council.

In some respects the council has been the least successful branch of our city governments, but many people have ad-

<sup>1</sup> In many cities the charters give the councils the right to pass ordinances that are necessary for the general welfare, and which are not contrary to the constitutions of the State and the United States.

<sup>2</sup> The *ordinary* financial powers of the council are limited in some cities by boards of estimate composed of the auditor, the mayor, and some of his appointees. The council has less control over expenditures than these boards. The *extraordinary* financial powers are often limited by the requirement that the expenditure shall be ratified by popular vote, as shown above.

vocated an *extension of the powers* of the council: (1) as a means of reform for the council, or (2) as the best remedy for the defects of city government. In several American cities a plan is being tried of concentrating practically all power in the council, hoping to make the body responsible for the success or failure of the work done by the municipality. This plan corresponds in some particulars with the English form of city government.<sup>1</sup>

**70. The Mayor with Centralized Power.** — An attempt has been made in some cities, during the last two decades, to remedy the defects of municipal government by concentrating in the hands of the mayor the absolute control over most of the administrative officials of the city. Instead of having a great many officials elected by the people, or appointed by the council, as was formerly the case, the *mayor is allowed to select and remove* most of these subordinate executive officers, including not only the heads of departments, but others such as the city clerk, the treasurer, and the attorney. He has consequently been held *responsible* for their acts, in the cities where he has this power over them, and rightly so, for they must do as he wishes, or he may remove them.

Those cities which have been able to offer their mayors large salaries and considerable power have succeeded in securing as candidates for the mayoralty men of ability and of business standing. By thus awakening popular interest, a long step has been taken toward securing good government, irrespective of any benefits in the new method adopted. Whether the concentration of power in the hands of the mayor will ultimately prove a blessing, we cannot say; but, judging from the success of the national administration (§ 312), in which the executive power is centered in the

Eliot, C. W., in *World's Work*, 14 (1907), 9419-9426.

Mayors with very great powers.

Goodnow, *City Gov't*, 65-68.

Bryce, *Am. Commonwealth*, abr. ed., 431-439.

Reasons for granting mayors great power

<sup>1</sup> On Galveston plan, see Turner, G. K., in *McClure's Magazine*, 27 (1906), 610-620; Slosson, W. B., in *Independent*, 63 (1907), 195-200; Haskell, H. J., in *Outlook*, 85 (1907), 839-843. On Des Moines plan, see Dillon, S. J., in *Overland Monthly*, 50 (1907), 324-328. On English form of city government, consult Lowell, *Government of England*, I, 144-201.

President, it is likely to be more effective than the older system.

Legislative and administrative powers.

Goodnow,  
*City Gov't*,  
176-179.

**71. The Mayor with Ordinary Power.**—A second kind of mayor, still to be found in a great majority of our cities, has general supervision of city administration, but he cannot control the actions of any one except himself and his immediate subordinates. He is aided by associates or colleagues, all of whom are independent of the mayor, for they are chosen without consulting him, and usually cannot be removed at all. A mayor of this type is usually elected for a term of two years by the voters of the city. As he is not called upon to appoint many officials of prominence, his *chief powers* are his right to enforce the laws and his influence over the council. At the beginning of each year he sends to that organization a message, showing the condition of the city's finances, and recommending changes in the departments or their work. But it is his right to veto bills that gives him his greatest power. To pass a measure over his veto, a two-thirds vote of the council is necessary, so that the overruling of his veto is very rare.

Elective officials.

Goodnow,  
*City Gov't*,  
113-118.

**72. City Elections.**—Besides the mayor and the councilmen, an auditor, a treasurer, an engineer, an assessor, a tax collector, members of a school board, and often other officials are chosen by popular vote. The qualification for voters are everywhere the same as those prescribed for all other elections (§ 29), differing in this respect from the European custom of restricting the voting in cities to men of property.

Separation of city and state elections.

Until the close of the nineteenth century city elections were held almost always at the same time as state or congressional elections. As a consequence, the nominations for city office were of a distinctly *partisan* character, and it was practically impossible to select candidates on their merits. After some agitation, the fact became generally recognized that there is no necessary connection between city government and partisan politics, so that voting on party lines was a distinct injury to the city. When it was perceived that the

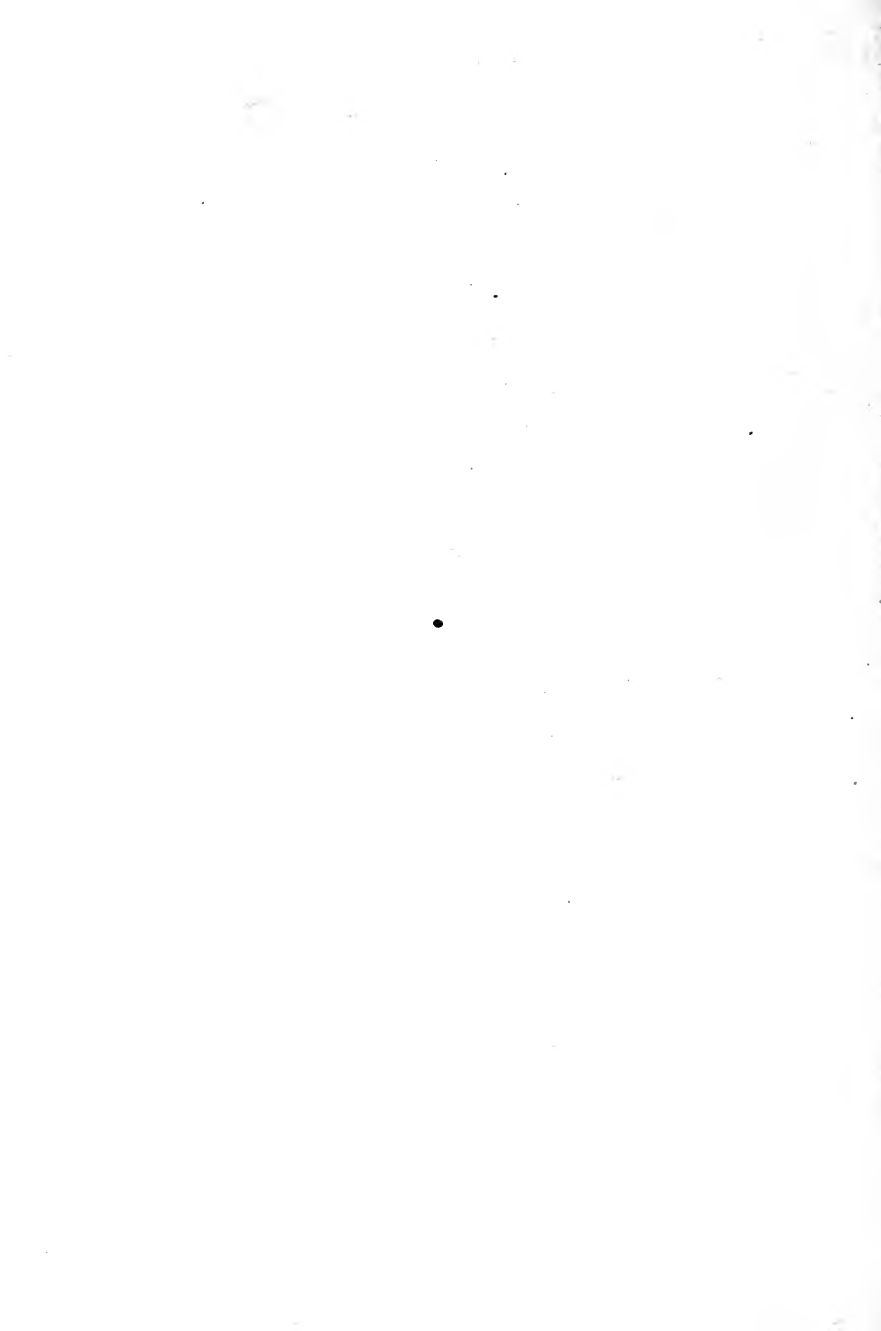


SEWING CLASS



WOOD-WORKING CLASS

Practical Work in a City Grammar School



*separation of city elections* from other elections was essential to good city government, separate dates were selected for city elections.

Separate city elections constituted only the first step in reform, as most voters naturally voted party tickets if there were party nominations. In some cases, temporary fusion movements of all the reform elements gained control of the city governments. As the only bond between these elements was their opposition to the rule of the corrupt politicians who had been in control of municipal affairs, success at the polls was followed by dissensions in the ranks of the reformers, since they desired different policies. Real success has been achieved in several cities by the *permanent organization of citizen movements* with definite and practical programmes. In some cities these organizations have followed the plan of supporting those candidates of the two *parties* who favored the citizen programme and in this way have secured a much better class of nominations for city offices. In other cities, the citizens' committees have named *candidates of their own* for all offices and have secured the election of these men or have compelled the parties to nominate excellent candidates.

"Good government"  
movements.

Goodnow,  
*City Gov't*,  
130-136.

**73. Administrative Departments.**—Most of the real work of a city consists of administration performed through numerous departments. The school department is in a sense distinct from the rest because its members are usually elected and have unusual powers in the expenditure of public money. Most of the other departments are managed by appointed boards or heads, a few like the police and fire departments having both boards and chiefs. *Two distinct forms of administrative organization are found in American cities.* (1) The older of these, at one time practically universal, leaves the departments entirely independent of one another. There may be forty or fifty departments which have no means of coöperating with one another and are not directly responsible to either the mayor or the council.

General  
organiza-  
tion.

Wilcox,  
*City Gov't*,  
193-214.

(2) In many cities there are four or five grand departments, each of which includes a number of bureaus, these bureaus corresponding to the disconnected departments of the "decentralized" cities. By this means, coöperation and the fixing of responsibility are secured.

Composition and powers of city school boards.

Goodnow, *City Gov't*, 262-273.

Other departments.

Goodnow, *City Gov't*, 274-285.

City *school boards* are composed of representatives from the wards, except in a few cities where the members are elected by all the voters within the city or are appointed directly by the mayor. All local regulations for the schools originate with these bodies, which elect the superintendents and all of the teachers. Most of the cities allow their boards to expend school moneys, so that they decide what the teachers' salaries shall be, keep the school buildings in repair, and erect new ones as they are needed.

To preserve the peace and maintain the public health, there are, in every city, police, fire, and health departments, which are combined often in a single *department of public safety*. Among the other departments for administering city affairs are those that look after the streets, the parks, the libraries, the water works, public lighting, and probably a dozen other matters. These may have boards, but usually are managed by commissioners appointed by the mayor or the council.

Need of selecting city employees solely on ground of fitness.

Hart, *Actual Gov't*, § 94.

**74. Civil Service in Cities.** — The employees in these departments are much more numerous than would at first be thought possible.<sup>1</sup> As most of the positions can be filled properly only by persons of considerable skill, the methods used in selecting employees are of the first importance. If the members of the library board may remove any of the library assistants whom they please, and appoint their own friends irrespective of training, the public library will be of little value to the citizens. It has seemed, therefore, necessary to have certain rules to regulate the appointments

<sup>1</sup> Some idea of the number of employees may be given by stating that, in 1900, there were 7637 policemen on the pay rolls of New York, that the same year Boston employed 730 firemen, and Philadelphia 5736 school-teachers.



and removal of city employees. For teachers and librarians, a course of training is prescribed, often by state law, while for policemen a certain minimum physical standard is made obligatory. Very little has been done to establish a regular civil service in which appointments shall be made exclusively on the ground of merit or *removal solely for incompetency*, but there is good reason to hope that the popular interest taken in this subject will lead to some improvement, without which good government is impossible.

**75. Village Government.** — When the population of any rural district becomes fairly dense, the voters may petition to have a special election called in order to determine whether the district shall be *incorporated* as a village. If the vote is favorable, articles of incorporation are drawn up in accordance with the law of the State. These articles state the boundaries of the village, as well as the number, terms, and powers of the village officials. Chief among the *officials* are the members of the village boards, corresponding to the city council, whose presiding officer is "mayor" of the village. Other duties are performed by the clerk, the treasurer, the assessor, and the overseers of the poor. These village governments are therefore quite similar to those of the cities, although their tasks are less numerous and much easier to solve.

Willard, C. D., in *Outlook*, 76 (1904), 938-941.

Incorporation and officials.

Fairlie, *Local Gov't*, 200-212.

## MUNICIPAL FUNCTIONS

*Shaw*

**76. The Extension of Municipal Activity.** — There has been a decided tendency in recent years for all of our governments to undertake a larger number of duties, and this tendency has been more marked with our city governments than with any of the others. Yet even with this great extension of municipal functions, American cities do much less for their people than all of the most progressive European countries. It does not seem probable, however, that the street railways of the United States will soon become public property, or that many of our cities will maintain pawn shops, as some foreign municipalities do.

Municipal activity increasing, but municipal enterprises still uncommon.

Fairlie, J.A., in *Annals Am. Acad. Pol. Sci.*, 25 (1905), 299-310.

Two kinds  
of municipal  
duties.

We may classify the duties performed by our cities as *necessary* or *business* duties. By *necessary* duties are meant those which are invariably performed by American municipalities. The *business* functions include the business enterprises which are either undertaken by the cities or performed by private parties with the consent of the cities. In the following sections the necessary duties will be treated briefly because they deal with subjects of interest, though to a lesser degree, to the rural communities and to the State at large. These are considered in other connections. The business duties which deal with the important problems of *public utilities* will be treated in this chapter.

Public  
safety.

Goodnow,  
*City Gov't*,  
228-247.

**77. The Necessary Work of a City.** — Disorder, evasion of law, and crime increase as population becomes more congested. The problems of *preserving order* and enforcing police ordinances are serious in all large cities (§§ 112, 113). The larger the city the greater the menace to *health* ordinarily from epidemics, the spread of ordinary contagious diseases, and the accumulation of filth and wastes (§§ 118, 120). In self-protection cities must make and enforce rigid plumbing and sewage regulations. They must provide a supply of pure water, must prevent the use of preservatives in milk or meats, and must keep careful track of other foods that are offered for sale (§§ 119, 121). In *tenement districts* the enforcement of regulations for proper air and light shafts, and in the centers of all cities proper precautions against *fire* are as necessary as any duties a city performs (§§ 119, 122).

Schools,  
streets,  
and parks.

The proper paving and care of *streets* constitute a task of no mean proportions (§ 138). The construction of public school buildings, the maintenance of *schools* of every grade from kindergartens to high schools, and the selection of teachers require the best thought and effort of one of the city's most important departments (§ 125). Less vital from a material standpoint but quite as essential for the social well-being of the people is the work of education, culture,

and recreation given by the city *libraries* and city *parks* (§§ 132, 133).

**78. The Cities and Public Utilities.**—Perhaps the greatest of the problems confronting our city governments is the question of public utilities. In cities the householders cannot furnish their own supply of water and most of them must depend upon others for lights and transportation. Among a city's necessary duties is that of deciding whether these utilities shall be provided by private corporations or by the city, in other words, whether a city shall have *municipal ownership* of any or all of these public utilities.

As public ownership has made so little progress in this country, the granting to corporations of *franchises* giving the right to supply *water, gas, electricity, transportation, telephone service, or other necessities* becomes so much the more important. Franchises are usually granted either by the city council or the state legislature. If by the former, the conditions under which a franchise is possible are described in the charter, and may be enlarged by a separate state law. It has been customary to give franchises for long periods without requiring anything in return; then, as population has increased, the privileges conferred by the franchise have become of enormous value. So often has this happened that cities are now endeavoring to protect themselves by restricting the *time* for which franchises are granted to fifteen or twenty years, requiring *sale of franchises* to the highest responsible bidder, and prescribing a minimum per cent of the *gross receipts* obtained from the business permitted, which shall be paid into the city treasury. Where these limitations have not existed, there has often been more or less *corruption* among the councilmen who have favored giving the franchise for nothing. On the whole, it must be said that our municipalities have not conducted this part of their business with economy, and that the unfortunate reputation for municipal misgovernment that we have abroad is justified by the facts.

The problem.

Zueblin,  
*Am. Mun. Progress*,  
10-13.

The granting of franchises.

Sikes, G. C.,  
in *Atlantic Mo.*, 91  
(1903),  
408-415.

Rowe, *Problems of City Gov't*, 157-165, 233-240

Municipal  
water  
works.

Baker, *Mun.  
Engineer-  
ing*, 61-83.

Franchises  
granted to  
private  
water com-  
panies.

Municipal  
lighting  
plants.

Zueblin,  
*Am. Mun.  
Progress*,  
87-95.

Rowe, *Prob-  
lems of City  
Gov't*,  
218-224.

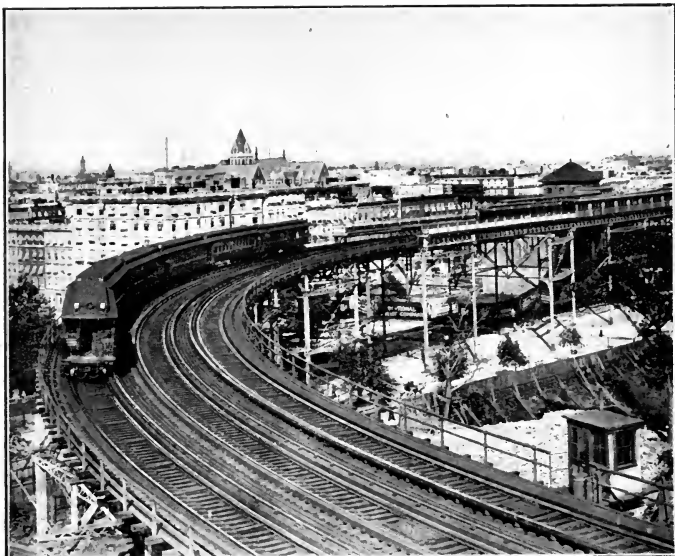
Private  
gas and  
electric  
companies.

Cravath, J.  
R., in *World  
To-day*,  
12 (1907),  
374-379.

**79. The Water Supply.**—Municipal ownership of water systems is now more common than private ownership in all cities of prominence. (1) The need for a supply of pure water and (2) the very slight cost of *operating* the water plant have probably caused cities to incur the great expense of constructing conduits a long distance, building vast reservoirs, and laying an intricate network of pipes throughout their streets rather than leave the business to individual enterprise.

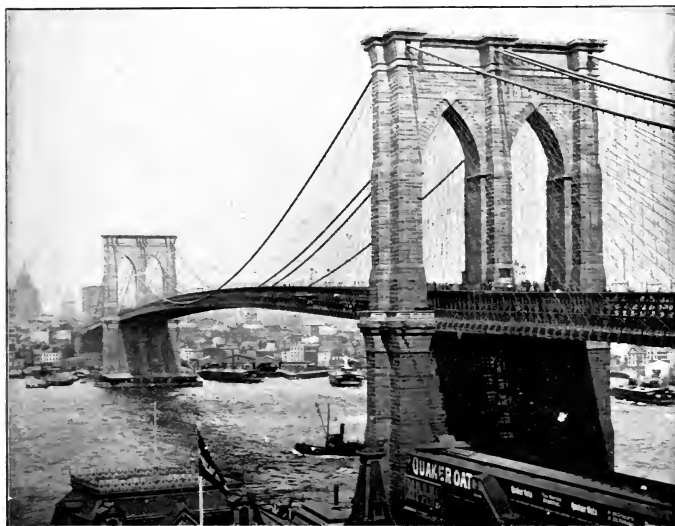
The majority of the cities whose water is furnished by private parties arrange in the franchise which they grant that at the expiration of the "life" of the franchise, the cities shall have the right to purchase the property at a reasonable cost, or for stated sums. A few have been so farsighted as to provide that when the franchises expire the water plants shall revert to the cities without extra cost. *Municipal ownership of water has been so successful that in the future the granting of franchises to water companies is not likely to assume importance.*

**80. Gas and Electric Lighting.**—A few cities have undertaken to furnish their own lights for the streets and public buildings. Some of these retain a *monopoly* of the lighting privileges within the city, *i.e.* the householders must obtain their lights from the municipal plant as no other has been established. With very few exceptions, only small cities have public *electric* works, while scarcely any have ever attempted to manage municipal *gas* works. The success of these undertakings in the smaller cities seems to indicate that *municipal ownership will be more common in the future*, especially as the separate private gas and electric companies of one place have often been consolidated after each had gained valuable privileges from the city. Monopolies of this character in private hands are objectionable both because of the use they are obliged to make of the public streets and the power which they possess over their customers. The chief method of control for these public



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### ELEVATED RAILROAD, NEW YORK CITY



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### THE FIRST BROOKLYN BRIDGE, NEW YORK CITY

(This bridge is one of the greatest municipal undertakings in existence. The railway across it is owned by the city, but is under private management.)



service corporations consists in the power possessed by the city councils to fix the maximum rates that shall be charged for lighting.

**81. Transportation Facilities.** — With the development of better means of urban transportation, the suburbs of American cities have been brought so near the business centers that congestion of population in the central wards is less necessary than formerly. This is a distinct advantage from almost every point of view, but it makes the *problem of transportation* an important if not a serious one. This is especially the case in those cities in which the control of all the street railways has been gained by single corporations.

Most of the street railways now in operation have been built and are being managed under franchises granted by the city councils for periods of from twenty to forty years. The privilege of laying one or two tracks upon specified streets is given for a certain number of years on condition that cars should be run every ten, fifteen, or thirty minutes as the council considers necessary. At the time the privileges were granted, the companies might not have been able to carry out their part of the franchises and make a great profit, but very often in a few years *franchises have become worth immense sums*, no part of which has found its way to the city treasury. If in addition there has been a union of different companies which has avoided the expenses of competition, the cities may be obliged to suffer the inconveniences of poor services as well as to lose what should properly be theirs.

Two ways have been suggested of avoiding these evils. The *first* is to have the cities *own and manage* the street railways; the *second*, to grant, for a short term of years, franchises which give the cities *control* over the private companies, and which arrange to have a percentage of the profits paid into the city treasuries. The second method seems to be more popular and the one more likely to be universally adopted.

The transportation problem.

Hart, *Actual Gov't*, § 98.

Zueblin, *Am. Mun. Progress*, Chap. II.

Franchises for street railways.

Rowe, *Problems of City Gov't*, 233-240.

Shall cities own or simply control transportation facilities?

Parsons, F., in *Arena*, 25 (1901), 198-209.

Protection  
of city  
interests.

Rowe, *Problems of City Gov't*,  
271-280.

Monopoly  
and  
municipal  
ownership.

Ely, R. T., in  
*No. Am. Rev.*, 172  
(1901),  
445-455.

**82. Conditions affecting Municipal Ownership.**— For three reasons our cities must find the best means of dealing with this question of public utilities. (1) Our *streets are public property* and should be used solely for the good of the people. If permission is given to individuals or corporations to lay tracks or water pipes, or to erect poles that carry electric wires, the benefits accruing to the citizens should be in proportion to the privilege granted. (2) The *cities should receive a net income* for the use of the streets for these purposes, whether the business is conducted by the city or by private parties. (3) The citizens should have the benefit of *good service at reasonable rates*.

Whether these results can be obtained best by private or municipal ownership depends upon circumstances. If any of these business undertakings are naturally *monopolies* or become monopolies, the *need of adequate municipal control*, if not municipal ownership, has been proved by experience. When the original cost of the undertaking is large in proportion to the annual expense of operation, as is a system of waterworks, the *advantages* of public ownership are especially evident. On the contrary, any business of a semi-public nature, in which the employment of large numbers of men is necessary, has been almost universally left to private parties, unless continued private ownership has been a menace to the welfare of the city. Even then, *private management under public ownership* has usually been advocated.

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2. IS A STRONG COUNCIL OR A POWERFUL MAYOR MORE NECESSARY? Smith, E. B., in *Atlantic Monthly*, 89 (1902), 391-397; Goodnow, F. J., in *Municipal Program*, pp. 74-87; Durand, E. D., in *Political Science Quarterly*, 15 (1900), 426-451, 675-709.

3. NEW YORK SUBWAY: *Century Magazine*, 64 (1902), 894-911; Cunniff, N. G., in *World's Work*, 8 (1904), 5346-5364; Warner, J. D., in *Independent*, 58 (1905), 525-537; Baker, R. S., in *McClure's Magazine*, 24 (1905), 451-469.

4. THE ABUSE OF FRANCHISES: Richardson, C., in *Municipal Program*, pp. 120-128; Bemis, A. W., in *Forum*, 21 (1896), 56-62; Meriwether, L., in *Outlook*, 58 (1898), 920-924; Gladden, W., in *Outlook*, 66 (1900), 502-508; Bowker, R. R., in *Atlantic Monthly*, 88 (1901), 463-482, and in *Municipal Affairs*, 1 (1897), 605-630, 5 (1901), 886-904; *Municipal Affairs*, 5 (1901), 419-426, 6 (1902), 68-86.

5. MUNICIPAL WATERWORKS: Maltbie, *Municipal Functions*, pp. 147-154; Fairlie, *Municipal Administration*, pp. 272-280; Baker, in *Municipal Monopolies*, pp. 3-52.

6. MUNICIPAL OWNERSHIP OF PUBLIC UTILITIES: Ely, R. T., in *North American Review*, 172 (1901), 445-455; Shaw, A., and others in *Independent*, 49 (1897), 569-570; Francisco, N. J., in *Engineering Magazine*, V, 725 *et seq.*, and IX, 44 *et seq.*; *Municipal Affairs*, 1 (1897), 421-490; 6 (1902), 87-108, 636-647; Robbins, H., in *American Journal of Sociology*, 10 (1905), 787-813; *Annals of American Academy of Political Science*, 30 (1907), 557-592.

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1. The relation of the city to the State. Goodnow, *Municipal Problems*, pp. 63-89. Why ought the city and the legislature to have something to do with the making of its charter?

2. Municipal government now and 100 years ago. Woodruff, C. R., in *Popular Science Monthly*, 58 (1900), 60-68.

3. San Francisco Charter. Shaw, A., in *Review of Reviews*, 19 (1899), 569-575.
4. Should councilmen be elected by wards or from the whole city?
5. Separate municipal courts. Wilcox, *City Government*, 214-225.
6. Home rule in Missouri cities. Peters, J. W. S., in *Annals of American Academy of Political Science*, 27 (1906), 155-167.
7. Municipal referendum. Commons, J. R., in *Political Science Quarterly*, 17 (1902), 609-630.
8. City government by *taxpayers*. Brooks, R. C., in *Municipal Affairs*, 3 (1899), 396-433.
9. Good government in Cleveland. Howe, F. C., in *World's Work*, 3 (1902), 1723-1728.
10. Reform in Chicago. King, H., in *Annals of American Academy of Political Science*, 25 (1905), 235-247.
11. Awakening of Philadelphia. Marcossou, I. F., in *World's Work*, 10 (1905), 6639-6651.
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14. New York's new water system. Reeve, A. B., in *World Today*, 12 (1907), 394-400.
15. The wastes of a great city. Woodbury, J. McG., in *Scribner's Magazine*, 34 (1903), 387-400.
16. Transportation problem in Boston. Robbins, H., in *Reader*, 4 (1904), 624-632.
17. Rapid transit in New York. Wheatly, W. W., in *World's Work*, 6 (1903), 3422-3436.
18. How Boston solved the gas problem. Brandeis, L. D., in *Review of Reviews*, 36 (1907), 594-598.
19. Wisconsin's public utility law. Commons, J. R., in *Review of Reviews*, 36 (1907), 221-224.
20. Look up recent material on this city in the periodical indexes under name of city.

### Questions

1. What was the population of this city, according to the last census? What was the percentage of growth during the previous decade? What is the area of the city?
2. What date does the present charter bear? Was it given to the city by the state legislature? How may it be amended?
3. Is our council composed of one or two chambers? How many members are there? What is their term of office? Are they elected

by wards? What are the chief powers of the council? With what body does the control of the city finances rest?

4. Has our mayor extraordinary or only ordinary power? What is his term? his salary? What officials does he appoint?

5. What other officials and what boards are elected by the voters? How is the police board chosen? the board of health? Have we a board of public works? Is there a civil service commission in this city to examine applicants for positions?

6. What are quasi-public corporations? Does this city own a system of waterworks? If so, when was it constructed or purchased?

7. By whom are street railway franchises granted? for how long, usually? Do the railways pay the city a percentage of their earnings? Are all under a single company, or are there competing lines?

### Municipal Government

After completing Chapter XII, the student should review the subject of city government — its organization and its activities.

#### I. ORGANIZATION.

1. Charter, § 67 :

- (1) When obtained,
- (2) How obtained,
- (3) How changed.

2. Council, §§ 68, 69 :

- (1) Number of houses and members,
- (2) Method of election,
- (3) Term of office,
- (4) Powers, § 69 :
  - a. regular,
  - b. financial,
  - c. others.

3. Executive officials :

- (1) Mayor :
  - a. Election and term,
  - b. Powers :
    - (a) centralized, § 70 ;
    - (b) decentralized, § 71.
- (2) Auditor,
- (3) Treasurer,
- (4) Attorney,
- (5) Clerk,
- (6) Others (give method of selection and powers for b to f).

4. Administrative departments, § 73 :  
(Give number of members, method of choice, term of office and powers.)
  - (1) Centralized or decentralized system in use ?
  - (2) School board.
  - (3) Public safety :
    - a. police board,
    - b. fire board,
    - c. health board.
  - (4) Public improvements and works :
    - a. streets,
    - b. parks,
    - c. library,
    - d. water,
    - e. sewers.
  - (5) Other departments.
  - (6) Civil service in departments ? § 74.
5. City courts :
  - (1) Criminal courts,
  - (2) Civil courts.

## II. ORDINARY ACTIVITIES.

1. Preserving order :
  - (1) Officials and force, §§ 70, 113 ;
  - (2) Difficulties, §§ 112, 113.
2. Health regulations :
  - (1) Contagious diseases, § 118 ;
  - (2) Sanitation :
    - a. pure water, § 119 ;
    - b. building regulations, § 119 ;
    - c. street cleaning, § 120 ;
    - d. garbage disposal, § 120 ;
    - e. sewage disposal, § 120.
  - (3) Food regulations :
    - a. enforcement of general laws, § 121 ;
    - b. inspection of milk, meats, etc., § 121.
3. Protection against fire, § 122.
4. Streets :
  - (1) Laying out, § 137 ;
  - (2) Improving, § 138 ;
  - (3) Lighting and sprinkling, § 138.
5. Education :

- (1) Schools, § 125 :
  - a. grammar and high schools,
  - b. kindergarten and technical schools.
- (2) Libraries, § 133.
- 6. Public charity :
  - (1) Outdoor relief, § 130 ;
  - (2) Indoor relief, § 130 ;
  - (3) Hospitals, § 131 ;
  - (4) Dispensaries, § 131.
- 7. General welfare :
  - (1) Parks, § 132 ;
  - (2) Playgrounds, § 132 ;
  - (3) Regulating sale of liquors, §§ 134-135.

### III. PUBLIC UTILITIES.

- 1. The problem, § 78 :
  - (1) The objection to franchises,
  - (2) Question of municipal ownership,
  - (3) Municipal ownership and management.
- 2. Water, § 79 :
  - (1) Reasons for municipal plants,
  - (2) Extent of municipal ownership,
  - (3) Success of municipal ownership.
- 3. Lighting, § 80 :
  - (1) Gas :
    - a. use,
    - b. success.
  - (2) Electricity :
    - a. when it is used,
    - b. success.
- 4. Transportation, § 81 :
  - (1) Municipal railways here and abroad,
  - (2) Advantages and disadvantages of ownership,
  - (3) Advantages and disadvantages of management.
- 5. Conditions affecting municipal ownership, § 82 :
  - (1) Monopolies,
  - (2) Ordinary conditions.

### IV. FINANCES.

- 1. Expenditures, § 146 :
  - (1) Schools,
  - (2) Streets,

- (3) Public safety,
- (4) Miscellaneous.
- 2. Revenue :
  - (1) Taxation :
    - a. general property tax, § 149;
    - b. other taxes.
  - (2) Business income, § 156 :
    - a. municipal enterprises :
      - (a) finance *vs.* public welfare,
      - (b) extent of municipal ownership.
    - b. sale of franchises,
    - c. licenses :
      - (a) liquor saloons,
      - (b) others.
  - (3) Fines.
  - (4) Special assessments, § 157.
- 3. Debts, § 158 :
  - (1) Need of special revenue,
  - (2) Methods of selling bonds,
  - (3) Limitations on amount of debt.



## CHAPTER VI

### THE STATE LEGISLATURES

**83. The Importance of the Legislature.**— *The legislatures overshadow the rest of our system of state government, since they not only make laws upon all subjects that are not expressly and exclusively granted to the national Congress, or denied by the United States or state constitutions to the legislature, but may also interfere in many ways with the work of the other departments of the state government. All of the general laws under which our local governments and schools are organized, those referring to the state and local courts and procedure in these courts, those dealing with the making and enforcement of contracts, the transfer of property, marriage and divorce, with the prevention of the spread of diseases, with the incorporation of business houses—all of these form only a part of the vast number under the charge of the legislatures, the whole covering a set of subjects of the first importance not only because they are so numerous, but because all are of such interest to us in our home and business life.*

Legislative powers.  
Reinsch, *Am. Legislatures*, 126-130.

We can probably get the best idea of the enormous power possessed by the legislatures by mentioning the *restrictions* placed upon them (§§ 88-90), but we must not forget that the powers still exercised by the legislatures greatly outnumber the powers denied to them.

Restrictions on powers.

### ORGANIZATION

**84. Composition and Sessions.**— The universal form for the state legislatures is that of two houses,<sup>1</sup> the smaller of

The two houses.

<sup>1</sup>The only States that have ever had one-chambered legislatures are Pennsylvania (1776-1790), Georgia (1777-1789), and Vermont (1791-1836).

Hart, *Actual Gov't*,  
§§ 60, 61.

which is always called the *senate*, while the larger is usually known as the *house of representatives* or the *assembly*. These houses have practically equal powers, as ordinary bills may be introduced in either house, and must be passed by both before becoming laws. The difference between the houses is therefore principally one of size, as both represent the same people, have practically the same interests, and are chosen by the same voters (§ 30).

Ordinary  
and special  
sessions.

All of the earliest state constitutions compelled the legislatures to hold at least one session a year, and aimed to prevent long breaks between sessions. Gradually the States recognized the need of less legislation, and *biennial sessions* became more and more the rule, until now only six States hold annual sessions. Four of these, and a few of the other older States, place no time limit on legislative meetings, but most of the States think a sixty or ninety day session long enough, while three of them make forty days the limit. Extra sessions may be called by the governors, either at their own wish or on request of a stated proportion of the members of the legislatures. When no agreement can be reached as to the time of adjournment for either a regular or a special session, the executives may set a day for that also.

Reinsch,  
*Am. Legislatures*,  
131-133.

History and  
present  
requirements.

**85. Privileges and Disabilities of Members.**—When we look over the *privileges* accorded members of our legislatures, we are unconsciously carried back to the time when the English kings tried to interfere with the action of Parliament by arresting its boldest members. When we consider the *disabilities* of legislators, we are just as forcibly reminded of the effort made by later Parliaments to prevent corruption of their members by the executive branch of their government. Members of the legislatures in all the States are privileged from arrest during legislative sessions, except for treason, felony, and breach of the peace, and are permitted perfect freedom of speech within the halls of the state capitols; but no legislator may be appointed to a lucrative position created during his term of office.



Legislators are not asked to donate their time to the public service, although the pay is never large enough to be a great inducement. No distinction in salary is made between the senators and representatives. Two methods of payment are used, one set of States granting a yearly salary, the other and larger set fixing a *per diem* rate, although both grant an extra allowance of "mileage," for traveling expenses. As might easily be imagined, most of the States that have sessions of an indefinite length prefer a fixed sum per year, varying from \$200 in New Hampshire to \$1500 in New York, the latter being the only State in the Union where the pay amounts to more than \$1000. The usual daily compensation is \$5, no State paying over \$10, and two but \$3 a day.

Compensation of legislators.

**86. The Separate Houses.**—Not only are the lower houses larger than the senates, but the terms of their members are usually only one half as long as those of the senators, and higher qualifications are established for senators. Most senates are *continuous* bodies, one half of the members retiring at a time. As a rule, each house has control of its own affairs,<sup>1</sup> and each has certain special powers.

Chief differences.

The state *senates* usually have the right to confirm or reject the *appointments* made by the governors, and are often allowed to appoint independently of the executive. When a state official is *impeached* (see § 97) by the lower house, the senate decides whether he is guilty or not, a two-thirds vote being necessary to convict. The special powers of the lower houses are relatively less important than those of the national House of Representatives. The right of originating revenue bills, which the colonial assembly cherished as its most valued possession, still exerts an influence, as over one half of the States give the *lower houses* exclusive right

Special powers of each house.

<sup>1</sup> Each house regulates its own affairs under the state constitution. That all-important document tells how many members shall constitute a quorum—usually a majority of those elected—shows under what circumstances a member may be expelled—ordinarily by a two-thirds vote—and arranges that a journal be kept and published. It permits each house to elect its own officers, except the presiding officer of the senate, when the state has a lieutenant governor, and allows each to decide for itself which of two contesting candidates is entitled to a seat with its own members.

to *introduce revenue bills*. Impeachment is also brought by the lower house.

### THE WORK OF THE LEGISLATURES

In the  
houses.

Hart, *Actual Gov't*,  
§§ 62, 63.

Reinsch,  
*Am. Legislatures*,  
183-195.

The  
governor.

Hart,  
*Actual Gov't*, § 64.

"Refer-  
endum."

**87. The Process of Lawmaking.**—As a rule, the state constitutions prescribe the steps to be followed in making laws. First of all, a *bill*, as it is called, is introduced in one of the houses of the legislature by some member. The character of the bill is indicated by its title, which must not include more than one subject. After the clerk has read the bill either in full or by the title, it is usually sent to the committee having charge of all subjects similar to those of which the bill treats—in technical language, the bill is *committed*. The committee may not see fit to bring into the house a report upon it, and it is said to have been "killed in committee." If fortunate enough to escape this fate, it is *reported*, read a second and third time, and possibly debated or amended. Finally it may be brought to a *vote*, and if favored by the majority required by the state constitution—usually one half of those elected to the house—it is signed by the presiding officer and sent to the other house. Again it must go through the three readings on three separate days, and, if approved, is sent to the governor. The governor has from ten to thirty days to decide whether he will sign the bill. If it is objectionable to him, he returns it to the house in which it originated with his reasons for *vetoing* it.<sup>1</sup> If, however, in spite of his veto, a large majority in each house still wish the bill to become a law, it is "passed over the veto" and becomes a law without the governor's signature.

**88. Direct Legislation.**<sup>2</sup>—The power of the legislatures has been greatly reduced by different forms of direct legis-

<sup>1</sup> The governor has no veto in Rhode Island and North Carolina.

<sup>2</sup> The referendum has been in use in connection with constitutional amendments and local laws in all of our States for many years. The initiative, however, has been less widely adopted. Many States allow it in

lation. By direct legislation is meant any lawmaking in which the voters participate directly. For instance, when the people vote upon a new state constitution which contains many laws, or upon a constitutional amendment, we have examples of direct legislation. If the voters of a town decide in favor of prohibition, the legislation is direct. This form of direct legislation is known as the "*referendum*."

There is another form which gives the people not only the last word in lawmaking, but the first as well. This is called the "*initiative*," and permits a certain number of the voters to propose laws which the legislature must consider. If the legislature does not pass the proposed measure, the people may vote upon it at the next election.

The *advantages* of giving the people the final decision on such important questions as those treated in constitutional amendments cannot well be questioned. It seems equally important that bills or resolutions involving the expenditure of large sums of public money should likewise be submitted to the voters, for the action of the state legislature or the city council upon these financial bills might be controlled by a few members, who are willing to sell their votes for a consideration. By the initiative, a legislative body may be forced to respect the public demand for some law, which otherwise it would have refused to consider. Acting thus as a check upon the legislatures, and as a *means of educating public sentiment*, direct legislation gives us better government than we should have had without it. There is no doubt that year by year it is being used more extensively. But therein lies a danger, that we shall use it for the ordinary details of government (a task for which the mass of the voters are not fitted) instead of considering it a *check upon our councils and legislatures*.

local matters, and in certain Western cities, especially San Francisco and Los Angeles, it may be applied to any subject upon application of fifteen and seven per cent respectively of the voters. Chicago permits its use in connection with public utilities. South Dakota and Oregon allow five per cent of the voters to propose laws for the State.

Bryce, *Am. Commonwealth*, abr. ed., 324-328.

Hart, *Actual Gov't*, § 39.

"Initiative."

Oberholtzer, *Referendum in America*, 383-389.

Advantages and disadvantages of direct legislation.

Parsons, *City for People*, 275-278, 362-370

Bills of rights.

Bryce *Am. Commonwealth*, abr. ed., 307-310.

Statutes in the constitutions.

Dealey, J. Q., in *Annals Am. Acad.*, 29 (1907), 55-61, Mar. Sup.

Former abuses.

Present prohibitions.

Reinsch, *Am. Legislatures*, 147-156, 300-304.

Evasion of prohibitions.

**89. Constitutional Limitations on the Powers of the Legislatures.** — American experience with over-legislation and unsatisfactory laws has led to a considerable restriction of the powers of legislature. The *bills of rights* in the state constitutions (§§ 102-104) have always forbidden the passage of laws that would interfere with the individual rights enumerated in them, but to these prohibitions have been added many others which do not permit the legislatures to invest the State's money in any enterprise, nor make grants to sectarian institutions, nor incur debt beyond a certain limited amount.

Still more has the power of the legislature been curtailed and its authority impaired by allowing the constitutional conventions to pass upon such subjects as the suffrage, education, taxation, railroads, and banks, laws which are placed in the constitutions and thus beyond the power of future legislatures to alter or repeal. This usurpation of legislative functions by the *constitutional conventions* has been due to popular distrust of the legislatures, but it has also increased the distrust, as less care has been taken to secure competent lawmakers.

**90. Local and Special Legislation.** — A great many of the laws passed at every session of our legislatures deal with matters of interest to just one person or locality. These local and special laws were formerly so common that they formed the majority of all laws enacted, but abuses became very numerous, and it was found advisable to forbid special legislation. For instance, when companies were incorporated by special act, privileges of great value were occasionally given away, and the people in self-protection, were obliged to demand a *general* incorporation law.

The list of titles for which local and special laws may not now be made is quite a long one in most of the States. The constitutions require that all laws relating to these subjects be of a general character and that means be provided by which individuals or communities may take advantage of the general law. Whereas formerly the legislature might grant a divorce to a particular person, or change the location of some county seat, or give a justice of the peace in one part of the State jurisdiction over cases denied to a justice in another part; now the legislature provides by *general laws* for the granting of divorce by the courts, for the changing of county seats in any part of the State, and for uniformity in the jurisdiction of all justices of the same grade.

The legislatures frequently seek to evade these provisions of the constitutions by passing laws that are really special, but which they call general. In many States where laws dealing with separate cities are not permitted, the legislature has first divided the cities into classes with one or at most two cities in a class, and then proceeded

to make laws for each class. This evasion of the constitution has been permitted in some States by the courts, but fortunately not in many.

**91. The Defects of our State Legislatures.**—The lawmaking bodies of our commonwealths impress many critics as one of the least successful parts of our political system. It is claimed that

(1) It is claimed, often without just cause, that they are composed of *inefficient men*, and, consequently, fail to command respect. Many reasons are given for this state of affairs, no one of which satisfactorily explains it. The mode of electing residents by districts has been assigned as the chief cause. The absolute control of States by political machines is often held responsible for it. Popular indifference to state government, due to ignorance of the importance of state duties, also plays some part. But, hidden though the sources of the evil may be, the results of popular distrust in the legislatures are made plain in the general tendency to consider the lawmaking bodies a necessary evil. Many important duties have been given to the constitutional conventions, the sessions have been made less frequent and are required to be short, and a constantly increasing field of legislation is being denied them.

legislators are incompetent

Bryce, *Amer. Commonwealth*, abr. ed., 373, 378-386.

Cf. Roosevelt, *Amer. Ideals*, 118-125.

(2) Charges of corruption are by no means unknown, the influence of the representatives of great corporations, especially through the use of money, being considered more potent than public opinion in so many cases. On account of the necessity of making laws affecting *corporations*, the legislatures are exposed to great temptations, which they may not be able to resist.

and corrupt. Roosevelt, *Amer. Ideals*, 125-142.

(3) Though they have such important duties to perform for the State, the members are often chosen on account of personal preferences for senatorial candidates.

Senatorial elections and legislation.

(4) Changes in the laws are made more frequently than the conditions demand, *i.e.* there is *too much legislation*. The whole sphere of state activity is of such a character that any change in the law interferes with many business or other operations. But instead of being sure that every change means improvement, the legislatures are constantly amending the statutes, when the alteration does more harm than good.

Ill-advised and ill-digested laws.

Fortunately, all of these criticisms do not apply to any one of our state legislatures. Of some legislatures no one of them is true. Certain it is that they are due quite as much to popular apathy as to any defect inherent in the state government.

Summary.

### General References

- Hart, *Actual Government*, pp. 127-139.  
 Bryce, *The American Commonwealth*, abridged ed., pp. 324-341, 360-373.  
 Shaw, "American State Legislatures," in *Contemporary Review*, 56, 555-573.  
 Cooley, *Constitutional Limitations*, pp. 155-191.  
 Cleveland, *Growth of Democracy*, pp. 177-241, 320-351.  
 Cooley, *Constitutional Limitations*, pp. 102-154.  
 Oberholtzer, *The Referendum in America*.  
 Reinsch, *American Legislatures and Legislative Methods*.

### Topics

THE DEFECTS OF OUR STATE LEGISLATURES: Bryce, *American Commonwealth*, abridged ed., pp. 371-386; Roosevelt, "Phases of State Legislation," in *Century*, 29 (1885), 820-831; Lowell, F. C., "Legislative Shortcomings," in *Atlantic Monthly*, 79 (1897), 366-377; Reinsch, *American Legislatures*, pp. 228-274.

LOCAL AND SPECIAL LEGISLATION: Cleveland, *Growth of Democracy*, pp. 348-351; Goodnow, *Municipal Problems*, pp. 37-47; Thorpe, *Constitutional History of the American People*, II, pp. 417, 418, 451.

### Studies

1. Legislative committees. Reinsch, *American Legislatures*, pp. 159-182.
2. The disadvantages of direct legislation. Lowell, A. L., in *Atlantic Monthly*, 73 (1894), 520-526.
3. The extensive use of the referendum for local finance. Oberholtzer, *The Referendum in America*, pp. 241-285.
4. Political experiments of Oregon. Schafer, J., in *Review of Reviews*, 34 (1906), 172-176.
5. Public works influencing legislative action. Reinsch, *American Legislatures*, pp. 275-298.
6. The legislative product. Reinsch, *American Legislatures*, pp. 299-330.
7. A state capitol (Pennsylvania), two phases. Caffin, C. H., in *World's Work*, 13 (1907), 8195-8210; Henry, A. J., in *Independent*, 62 (1907), 1235-1241.

**Questions**

1. How many senators are there in the legislature of this State? how many representatives? For what terms are they elected? What salary does each member receive? Is the senate a "continuous" body? If so, what proportion of the members retires at a time? (State Constitution.)

2. When are state elections held? When does the legislature meet? Are there any limitations upon the length of the sessions?

3. How many constitute a quorum for each house? What vote is necessary to pass a bill the first time? over the governor's veto?

4. Name some of the constitutional restrictions upon procedure in our legislature.

5. Give the boundaries of this senatorial district; this assembly district. How do they compare in area and population with other districts in this vicinity?

6. Who are our present representatives in the legislature? How long have they served in this capacity? Which political party has a majority in the legislature?

7. Upon what important topics is our legislature forbidden to make local or special laws? What restrictions are there upon the financial powers of the legislature?

8. Is the referendum in use in this county for any local laws or business?

A handwritten signature, possibly "J. H. M.", is written above a thick, solid diagonal line that extends from the bottom left towards the middle right of the page.

## CHAPTER VII

### THE STATE EXECUTIVE

#### THE GOVERNOR

Central  
and local  
executive  
officials.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
367-360.

Relation  
to other  
executive  
officials.

Wilson, *The  
State*,  
§§ 1179-1182,  
1195-1208.

Hart, *Actual  
Gov't*, § 68.

Finley and  
Sanderson,  
*Am.  
Executive*,  
29-47.

**92. The Governor as State Executive.** — *The enforcement of state law* is intrusted either to certain persons connected with the state government or to the officials of the cities, towns, and counties of the State. *Most of the laws are carried out by local officers*, so that comparatively few duties are left to the governor, the secretary of state, and other state officials, who are mainly occupied with routine work.

The governor is by far the most prominent and powerful executive official of the State. Around his election the chief interest in state politics centers. More than any other one person, he determines what the policy of the state government shall be, and he usually receives the praise and bears the blame for success or mismanagement in the different executive departments. Yet he is often unable to control the actions of more than a small proportion of the state administrative officers, for *very few state officers are appointed by him or are responsible to him*. Many of them, as the secretary of state and the auditor, are elected by the people. Others are selected by the legislature or by the heads of departments, and the larger number are local officials, chosen by the voters of the counties, cities, or towns, who are in no way bound to execute a law in the way the governor wishes. There is at the present time, however, a very strong movement to concentrate more power in the hands of the governor, giving him greater control over his colleagues, and making him responsible for their acts.



**93. The Position of the Governor.** — In most parts of the Union, state elections for the governor, legislators, and others are held on the Tuesday after the first Monday of November. There is apt to be a great deal of electioneering before the meeting of a state convention, as the candidates for the *nomination* for governor are usually numerous and active, and each desires to have delegates favorable to himself chosen in different counties. It may therefore be known before the convention convenes who the candidate will be, and the voting in that body is more often than not purely formal. In a close State, the *campaign* following the nominations will occasionally awaken all of the interest of a presidential year, and, in fact, the two campaigns often coincide.

Election.

Blythe, S.G.  
in *Cosmo-  
politan*,  
26 (1899),  
288-294.

In about one half of the forty-six States, the governor is chosen for a term of four years, and in most of the rest for two years.

Term of  
office.

The States have never felt it wise to allow the voters to elect as governors whomever they please, but have given certain minimum qualifications for the office. As a rule, the governor must be at least thirty years of age, and have been a resident of the State for not less than five years, and a citizen of the United States for an equal period.<sup>1</sup> Ability, popularity, and availability count much more with the politicians who select gubernatorial candidates.

Qualifica-  
tions.

As with the legislators, the governors are expected to receive a part of their compensation in the honor accompanying the office, for the average salary is less than \$5000 and in no case over \$12,000.

Compensa-  
tion.

**94. Powers of the Governor: General and Military.** — Although the executive power of the State is divided among

Appoint-  
ment and  
pardon.

<sup>1</sup>Minnesota demands that her governor be not less than twenty-one, and requires a residence of but one year in the State, her requirements being the most modest of any of the States. Louisiana and Arkansas, on the other hand, require ten years' residence in the State, and New Jersey and Mississippi allow only those who have been citizens of the United States for twenty years to hold the office. Illinois gives her governor \$12,000 a year. Vermont pays the smallest salary, \$1500 per annum.

Finley and Sanderson, *American Executive*, 83-104.

so many officials, the governor retains by far the largest share.<sup>1</sup> The offices to which he may make *appointments* (usually with the consent of the state senate), are both numerous and valuable, and his power of *removal*, while not great, is constantly increasing. If a vacancy occurs, he may select some one for the office until the legislature or the people can fill the position. In all but a very few of the States, the governor is allowed to grant reprieves and *pardons* except for such crimes as treason.

Military powers.

Being the *commander in chief of the military forces—the militia*—in all of the States, the governor may in time of disorder add greatly to his usual power. The Constitution of the United States permits him to organize this force into an army in case his State is actually invaded, and, if a widespread insurrection exists, he may use the militia in putting down the disorder. More frequently, the militia is likely to be called out to prevent destruction of life and property by the lawless element of society during strikes. If the sheriff of a county finds that he and his deputies cannot cope with the tumult, he calls upon the governor, and that official without delay orders a suitable number of companies to the scene of disorder.<sup>2</sup>

U. S. Constitution, Art. 1, § 10, cl. 3.

Finley and Sanderson, *American Executive*, 116-130.

General.

**95. The Governor's Legislative Powers.**—The most important powers of the governor are those relating to the legislature and to legislation. At the beginning of each session of the legislature, he sends to it a *message* showing the condition of the different executive departments and suggesting needed legislation. Only in rare instances, however, does this message exert a marked influence upon the

Finley and Sanderson, *American Executive*, 57-71.

<sup>1</sup> In Maine, Vermont, and Massachusetts, the governor shares his powers with an executive council, although the two together usually have some additional duties given in other States to separate boards and heads of departments.

<sup>2</sup> Where there is a state police, it can readily be seen that the governor is able to control the execution of state laws in the localities; but none of our States has as yet created a complete state police system, and in only a very few has this been attempted even in a modified form.

action of the legislature. When the two houses fail to agree upon a time for adjournment, he may *adjourn* them until some reasonable future date. He usually possesses the great power of calling all *special sessions* of the legislature, although in some States it is obligatory for him to do this when a certain number of legislators desire it.

His right to *veto* bills is undoubtedly that of most value to the governor. As we noticed (§ 87), when a bill has been passed in both houses of the legislature, it is sent to the governor, who has usually ten days in which to affix his signature or return it with his veto. Only two of the States, Rhode Island and North Carolina, do not allow the governor to veto bills, and all except four others require a much larger majority to pass the bill the second time than the first. As it is next to impossible for both houses to obtain these majorities when the governor has publicly expressed his disapproval of the bill, unless the feeling between the governor and legislature is most unpleasant, the wishes of the governor are likely to be considered upon any bill of importance. He is able to make his influence felt still further, as he is allowed to veto particular items in *appropriation* bills in nearly one half of the States.

The veto.

Hart, *Actual Gov't*, § 64.

Finley and Sanderson, *American Executive*, 72-82.

## STATE OFFICIALS AND ADMINISTRATIVE BOARDS

**96. The Governor's Colleagues.** — In about three fourths of the States there is a *lieutenant governor*, who takes the governor's place when the latter is called away from the State, or when the governor's office becomes vacant by his death or resignation. His ordinary duties consist merely in presiding over the deliberations of the state senate, during its short sessions.

Lieutenant governor.

The *Secretary of State* is little more than the chief clerk of the state government. He has charge of the state seal, keeps a record of all official acts of the legislative and executive departments, looks after the election returns for all state and national elections, and aids the legislators and governor when the records are to be consulted.

Secretary of State.

The finances of the States are relatively less important than those of the Nation and the cities. Nevertheless, several of the States find

Financial officials.

it necessary to raise from \$5,000,000 to \$15,000,000 a year in order to perform their work properly. The supervision of the financial system is left to the *controller*, by whom every order drawn upon the *treasurer* must be approved, before it can be paid by the latter from the state funds. If the state government expends a large amount of money through the counties, for schools and for public institutions, the controller frequently has the right to audit the accounts of the local officials who handle state money.

Other state executive officials.

Among the other state executives who are usually chosen by the people, though often by the legislature or the governor, are the superintendents of public works and of public instruction, the surveyor-general and the attorney-general. The first has charge of the erection of all public buildings and such enterprises as canals and irrigation dams. The last, the *attorney-general*, is the legal adviser of the governor and of the legislators, and the public prosecutor in all criminal or civil suits in which the State has an interest.

Impeachment and trial.

**97. Removal of Civil Officers of the State.**—All important officials connected with the executive or judicial service of the States may be *removed by impeachment* through the lower house of the legislature, and conviction in the state senate; most minor officials being removable by the person or the body that appointed them. To impeach a person in the house requires usually only a majority vote; but conviction cannot follow unless two thirds of the senators elected believe the official guilty of the charges brought against him.

Ordinary removals.

In a few States unsatisfactory or incompetent officials may be *removed by the governor* without using the unwieldy process of impeachment, but with few exceptions there is little opportunity to make "state" officers work in harmony with the plans of the head of the state government and practically none for securing uniform enforcement of the laws by the local officials, who, being responsible to no "state" officer, do as they or their constituents desire.

Superintendents, commissions, and boards.

**98. The State Administrative Departments.**—Our state governments have numerous duties to perform in overseeing the administration of state law. At the head of the *school systems* of the States are state superintendents and state boards of education. The regulation of the *railways* within any State is intrusted to a railway commission. State boards of *health* and of *charity*, state *labor bureaus*, and many others, constitute separate departments which aid in administering state laws.

Hart, *Actual Gov't*, § 69.

As a rule, the boards in charge of these administrative departments are appointed by the governor of the State for terms of several years. Many of the boards are bipartisan; that is, composed of an equal number of members from each of the two great political parties. In a few States, some of the boards are elected from districts.

Composition and selection of boards.

In several States the general oversight of the administration of the poor laws and the penal laws is intrusted to a *single state board of charities and correction*. Much more frequently the States have separate boards of charity, prison boards, commissions for the insane and others. In other words, the departments are not completely organized, or well centralized, as in the case of the national departments (§ 315) and of some city administrative departments (§ 73). To each of these distinct commissions is assigned but a single set of duties, and it makes no effort to work in harmony with the other boards which have charitable or corrective work.

Centralized and decentralized systems.

### General References

Hart, *Actual Government*, pp. 140-150.

Bryce, *The American Commonwealth*, abridged ed., pp. 342-346.

Wilson, *The State*, §§ 1183-1208.

Goodnow, *Comparative Administrative Law*, I, pp. 74-82; II, pp. 1-100.

Finley and Sanderson, *The American Executive and Executive Methods*.

### Questions

1. For what term is our governor elected? What are the minimum qualifications prescribed for the office? What is the salary?

2. Does the governor have the right to call or adjourn the legislature? Has he the right to veto bills? What does the word "veto" mean? If he has the right to veto, what majority may pass bills over the veto? Has he the "pocket veto" (§ 332)? May he grant pardons?

3. Is there a lieutenant governor in this State? What other elected state officials have we?

4. When was the last gubernatorial election? Who were the principal candidates? Who was elected? What was his plurality?

## CHAPTER VIII

### THE ADMINISTRATION OF JUSTICE

#### THE SYSTEM OF COURTS

State and  
national  
courts.

Baldwin,  
*Am.  
Judiciary*,  
165-172.

**99. The Highest State Courts.** — Our state and local governments have a much larger number of duties to perform than the national government, and these duties bring them into close touch with the citizens in their everyday life. Because of this condition of affairs, almost all of the civil and criminal suits brought for trial in the United States are tried in *state* courts, rather than in those of the Nation. Not only are these suits begun in state tribunals, but if they do not involve points of national law, the decision of the highest state courts to which the case may be carried is final, for the case may not be appealed to any other court whatsoever.

Composi-  
tion and  
jurisdiction  
of highest  
court.

Baldwin,  
*Am.  
Judiciary*,  
255-285.

At the apex of every state judicial system is a single court, to which all important cases are appealed for final decision.<sup>1</sup> This court has, as a rule, *no original jurisdiction*; that is, it considers only those cases tried first in a lower court. The number of judges<sup>2</sup> in these courts is usually three, five, or seven, and they are ordinarily chosen for a long term of years by the voters of the entire State. Occasionally they are elected by the voters of districts equal in

<sup>1</sup> Some of the States call the highest court the Court of Appeals, and have in addition another court for the whole State, which is known as the Supreme Court; but most of them have only one court for the entire State, the name *Supreme* being usually applied to this.

<sup>2</sup> Constitutional qualifications for these positions are rare, although many of the States demand that all of the higher judges be men of "exceptional intellectual fitness."

number to the number of the judges, but in six States they are appointed by the governors, and in five by the legislatures.

**100. Inferior State Courts.**—For the set of courts below the highest court, each State is divided into a suitable number of circuits or districts over each of which presides a court, called a *circuit* or *district court*, as the case may be. The judges are ordinarily elected by the voters of this circuit or district, and hold office on the average about six years. These courts have original jurisdiction in important cases, and try on appeal cases coming from those next lower, the *county courts*, whose judges are in one sense county officials, because they are elected by the voters of the counties, although the cases tried before them involve state laws more frequently than local laws.

Intermediate courts

The base of the judicial pyramid is formed by the country *justices of the peace*, or by the *city courts*, criminal and civil, whose jurisdiction is of necessity wholly original and confined to minor cases or those involving local laws. Except in a few of the Eastern States, these *judges are elected* by the voters of the section within which the court has jurisdiction, and, with a few notable exceptions, elections are held at least every four years.

Lowest state courts.

Baldwin, *Am. Judiciary*, 126-131.

As the business of the inferior state courts is more voluminous than important, each judge holds court separately, whereas in the higher courts all the judges constituting the court usually sit together for the trial of cases. That all of these judges are really state officers, even when elected by the localities, may be shown by the statement that they are removable in most of the States by the legislatures, either through impeachment or by a majority vote of both houses.

Character of the inferior courts.

Wilson, *The State*, §§ 1147-1167.

**101. The Necessity for an Upright Judiciary in a Republic.**—In a country whose political institutions are as popular in character as ours, the need of an able and upright judiciary is imperative. Our judges must not only explain the

Character of judicial duties.

meaning of the laws but of the constitutions as well, and if they are corrupt or are subservient to any particular interest or set of persons, justice will be "sold, delayed, and denied," and the fundamental rights of freemen will be refused to us. An ignorant or prejudiced judge is but little less dangerous to the public welfare and to individual security than a corrupt justice, and every possible precaution must be taken to secure men of ability and judicial temperament as well as of integrity. When, as is the case in most of the States, the salaries paid the highest judges are but a tithe of the income of prominent lawyers, the honor of holding the position must be made the chief attraction to jurists of ability. If we elect as judges men of inferior standing, men whose business is politics rather than the law, or men who seek places on the bench through dishonorable means and who use them for personal or partisan ends, we must expect a judiciary that does not command respect, and which, in the long run, will defeat the popular will and bring our free institutions into disrepute.

### THE PROTECTION OF INDIVIDUAL RIGHTS

Double  
danger to  
individual  
rights.

Hart, *Actual  
Gov't*, § 11.

**102. Protection through Bills of Rights in State Constitutions.**—These courts have especial charge of that very fundamental duty—the protection of individual rights. Life and property may be threatened from two important sources;—(1) the acts of other *individuals* who wish to do us bodily injury or gain, by unjust means, possession of our property, and (2) arbitrary or despotic action on the part of *government officials*, chiefly executive officers, who invade people's homes, arrest or imprison men arbitrarily, or rob them under disguise of collecting taxes. All history shows the peril and the disadvantages of governmental interference with individual liberties. The means of protecting individuals from government we shall consider first.

When the American colonies separated from Great Brit-



ain in 1776, they felt the need of protecting individual rights from the arbitrary action of any government. In consequence, the States adopted as parts of the new state constitutions "bills of rights," which aimed to prevent oppression of the citizens by the new state governments. The provisions of these bills of rights have been made more and more specific, so that those of to-day are *valuable safeguards of personal liberty*. When we realize that, under our federal system of government, the state and local governments make and execute almost all of the laws that are concerned with our everyday affairs, we can appreciate the need of guaranteeing to the individual freedom from interference in his home, his religion, and his business, by local and state authorities, as well as the need of assuring him every opportunity to secure justice in civil or criminal suits. All of this the state bills of rights are intended to insure to the citizens.

Our state bills of rights.

**103. Civil Rights in State Constitutions.**—While the right peaceably to *assemble* and *petition* the governments is one not likely to be interfered with, most of the state constitutions expressly prohibit its denial. A still larger number—in fact, all—assure *freedom of speech and of the press*, although many of them explicitly assert that persons who seek to injure the reputation of others shall be liable to punishment. These also specify that in a *suit for libel*, the truth may be introduced as evidence, and that malicious intent on the part of the speaker or writer must be proved.

Freedom of speech and of the press.

Hart, *Actual Gov't*, § 12.

It is eminently fitting that in this country, where religious freedom was permitted when restrictions existed everywhere else, *our state bills of rights provide for the fullest liberty in religious matters*. No State allows its governments to dictate to any one what church he shall attend, or compels him to contribute for the support of any church, the establishment of state churches being everywhere forbidden. No person is disqualified from holding office or exercising legal rights because of his religious views, although a very

Religious liberty.

Hart, *Actual Gov't*, § 13.

few of the older States make belief in the Deity a requisite for holding certain state offices. Such practices as *polygamy* are, however, punished as crimes, even when permitted by a religious sect.

Rights pro-  
tected by  
jury trial.

Hart, *Actual  
Gov't*, § 14.

Train, *Pris-  
oner at Bar*,  
334-349.

Stimson,  
*Federal  
and State  
Constitu-  
tions*,  
164-183.

#### 104. Constitutional Rights of a Person accused of Crime.—

In all of the States the great safeguard for a person accused of crime is the *constitutional* provision that the trial be held as soon as possible in open court before a jury of his peers. Further, no one can be held for trial unless a written charge has been filed against him. This charge may be merely an *information*, which is a document drawn up by the public prosecutor; but if the crime is murder, no person can be held for trial until the evidence has been considered by a grand jury and the person *indicted* by the jury. Except for crimes punishable by death, the accused has the opportunity of offering bail, which is forfeited if he fails to appear on the day appointed. He is never required to testify against himself, and cannot be punished if a single jurymen believes him innocent. In fact, the *constitutional safeguards* for persons accused of crime, supplemented by others in the *statute* law, protect accused persons so well that many undoubtedly guilty men escape, and society is therefore inadequately protected.

Criminal  
cases.

Hart, *Actual  
Gov't*, § 75.

Train, *Pris-  
oner at Bar*,  
1-30.

#### 105. The Distinction between Civil Suits and Criminal Cases.—

The courts aim to administer justice by considering all cases brought before them by some person or body of persons who claim to have been injured by the act of another. (1) If the act is of such a character that it affects the general public as well as the party directly wronged, the law treats the act as a *crime*, and the prosecution of the alleged wrongdoer is begun by the representative of the people. For example, robbery, arson, and murder are so inimical to the public, that the punishment of the offender could not wisely be left to private parties, however grievously they had been wronged. It is very unfortunate that many offenses or practices which are exceedingly injurious

to the public either are not or cannot be treated as crimes. Foreexample, it is not only absurd, but criminal, that persons or corporations of great wealth or influence who steal immense sums or defraud thousands by the use of "high finance" cannot be dealt with as criminals, while the petty pickpocket and swindler are imprisoned for long terms for minor offenses. (2) Disputes over land titles, failure to pay promissory notes, or neglect to perform a contract, involve comparatively little injury to the public, and cases relating to these subjects are termed *civil suits*.

Civil suits.

**106. Procedure in Civil Suits.** — When a party begins suit against another before a court of law, he is known as the *plaintiff*, the party against whom action is brought being called the *defendant*. The first step is taken by the plaintiff in a paper called the "writ," in which are set forth the injuries alleged to have been done by the defendant. The reply of the defendant contains a statement presenting the facts of the case from his point of view, or it may admit that the facts are as stated by the plaintiff, but assert that they do not constitute sufficient ground for the lawsuit; in other words, that the defendant has done the plaintiff no legal wrong. Additional replies may be necessary to determine exactly what is in dispute between the parties. When all of these have been given, the "pleadings" end, and the case is ready for trial in court.

The parties.  
Pleading.Baldwin,  
*Am.*  
*Judiciary*,  
201-207.

Lawsuits are usually tried by judges, although in most of the States either party may claim the right of *jury trial*. Evidence is presented, first by the prosecution and then by the defense, *witnesses* being called and examined by the attorney who brought them to court, and afterward cross-examined by the opposing counsel. An opportunity is then given each side to refute statements brought out in the latest evidence of the other, and for the *arguments* of the attorneys. If there is a jury, the judge gives it his "charge," showing what the law of the case really is, and what bearing the evidence has on the law. In that event,

Trial and  
writ of  
execution.Hart, *Actual*  
*Gov't*, § 76.Baldwin,  
*Am.*  
*Judiciary*,  
207-214.

the *verdict* is rendered by the jury, otherwise the judge decides both the law and the fact. The successful party is furnished later with a writ of *execution* to cover costs, or costs and damages. This writ may be enforced by the executive officer of the court against the property of the party named, so as to satisfy judgment. In almost all of the States, however, homesteads and personal property are exempt from seizure.

**107. Procedure in Criminal Cases.**—Persons suspected of having committed crime are arrested upon warrants which state the cause of the arrest, or without warrants, if caught under suspicious circumstances. After a brief period in jail, they are brought to trial either upon an *information*, or upon *indictment*.

The trial of an accused person is begun by reading in open court the charge against him and giving him a chance to *plead* guilty or innocent. If his answer to the question is "not guilty," the court provides him with counsel—unless he has already retained the services of a lawyer—and *a jury is selected* at once. Many citizens have already been summoned for jury service, and, as the names of these are drawn by lot, each is questioned by the attorneys for the State and the defense, in order to learn whether he has already formed an opinion regarding the guilt of the accused, or is biased in any way that would affect his vote on the final verdict. If objectionable, he is dismissed. When twelve men satisfactory to both sides have been selected, the prosecution calls its witnesses and the trial proceeds as in a lawsuit.

When the evidence is all in and the closing arguments have been heard, the judge instructs the jury as to the law, and the jurymen withdraw until a *verdict* has been reached. If declared innocent, the accused is at once set free; if found guilty, his lawyer will probably appeal the case to a higher court, or ask for a new trial; and, if the jury disagrees, he will be held for another trial, as legally no trial has taken place.

Arrest and  
examina-  
tion.

Baldwin,  
*Am.*  
*Judiciary*,  
226-240.

Trial.

Baldwin,  
*Am.*  
*Judiciary*,  
240-242.

Train, *Pris-  
oner at Bar*,  
148-177.

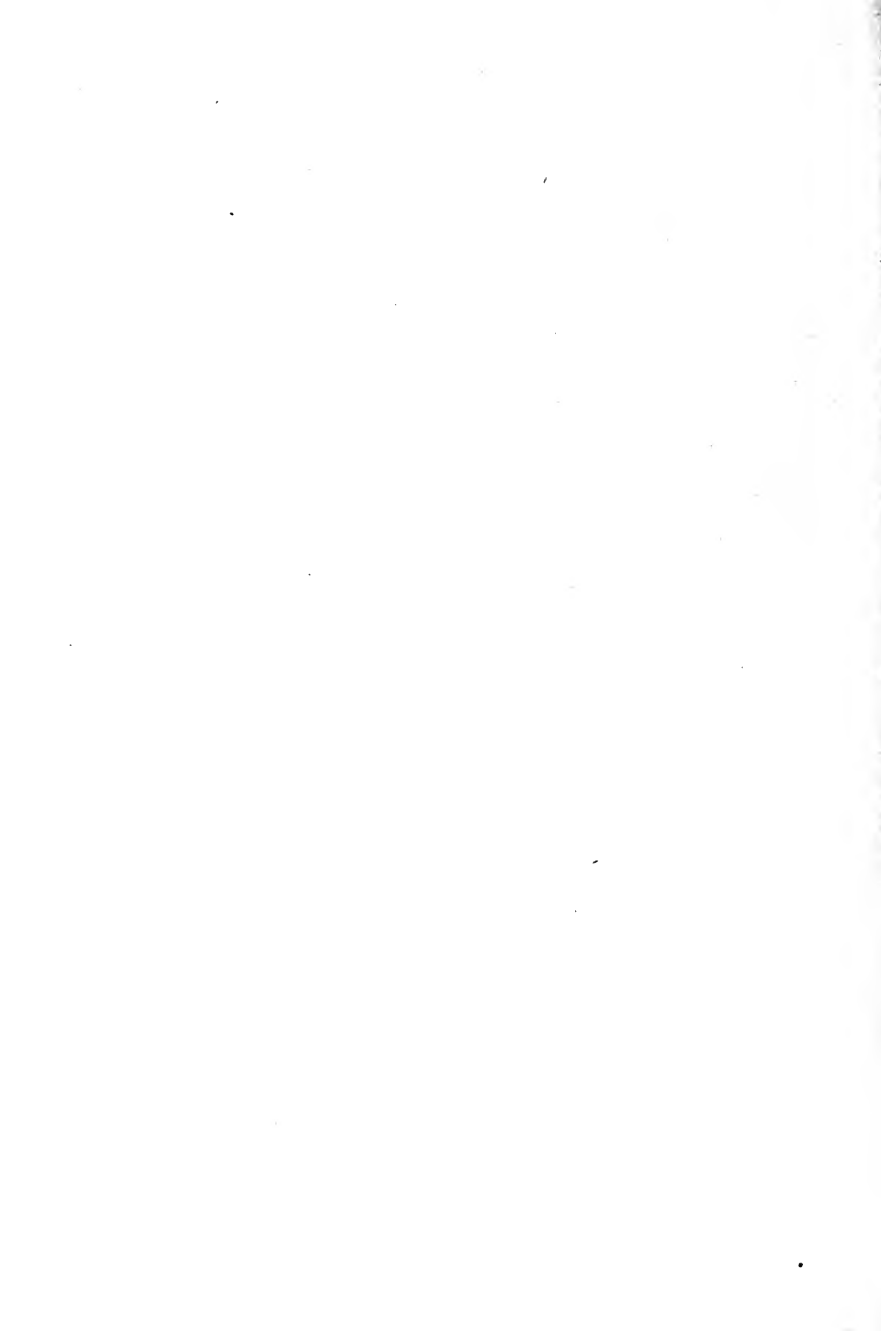
Verdict.

Baldwin,  
*Am.*  
*Judiciary*,  
242-244.

Train, *Pris-  
oner at Bar*,  
261-278.



A COURT ROOM SCENE



If guilty, *sentence* is pronounced by the judge, usually without delay, the court having discretion as to the advisability of giving the convicted party the maximum or the minimum punishment provided by the law for crimes of that class. No American can well be proud of failures in our courts to treat alike all offenders — great or small — or their inability or unwillingness to punish accused persons whose guilt is unquestioned. One of the greatest reforms needed in America to-day is a remedy for defects in the administration of justice.

Sentence.

Baldwin,  
*Am.*  
*Judiciary*,  
244-247.Train, *Prisoner at Bar*,  
261-278.

### THE JURY SYSTEM

**108. Juries and Jurymen.** — Juries are of three kinds. (1) *Grand juries*, which are composed of from twelve to twenty-three men, hold secret sessions, and either investigate the causes of crimes that have been committed, bringing indictments against those they believe guilty, or investigate the condition of the departments of government and their expenditures of money. (2) The *petit or ordinary jury* of twelve men settles most civil disputes and decides criminal cases. (3) The *police jury* consists of six men and determines the guilt or innocence of persons accused of committing misdemeanors. When any of these juries serves for the entire term of a court, they are known as term juries; otherwise they are special juries.

Kinds of  
juries.Train, *Prisoner at Bar*,  
81-101.

Only *citizens* are allowed to sit on juries. On account of the inconveniences of jury service, practically all professional men are *exempt* by law from jury duty, and on account of the annoyance caused by being taken from their business, most of the other prominent men of the community *shirk jury duty* as far as possible. In some States, juries are "drawn" from a list of those liable to service, and a summons served upon those chosen to appear at court, on a certain day. In other States jurymen are selected by jury policemen, who serve the summons on those whom they find on the streets or at their places of business.

Who may  
serve on  
juries.

Civil suits.

**109. The Extensive Use of the Jury System.**—The credit for maintaining so satisfactorily the rights of individuals before the law in England and America belongs, to a very great extent, to the jury system. When popular participation in the work of government was much less common than at present, when judges could not possibly be influenced directly by the wishes of the people, and when the principal characteristic of the criminal laws was their harshness, the right of trial by jury was almost the sole source of justice for the common people. With the changed conditions of the present, it is no longer the one thing indispensable to the oppressed, but its extensive use bears witness that its value is not purely historic. Although jury trial may be waived with the consent of both parties in *suits at law*, and although certain suits which deal with complicated matters are tried without juries in courts of *equity*, nevertheless the decision in the great majority of important civil suits tried in the United States still rests with juries composed of citizens.

Criminal cases.

Baldwin, *Am. Judiciary*, 184-189.

Advantage to accused.

In *criminal* cases, jury trial may not be required by the defendant, but, in trying persons for misdemeanors, or minor crimes, it is customary to have juries, while in cases where the crime amounts to a felony, the guilt of the accused is always determined by a jury.<sup>1</sup>

Train, *Prisoner at Bar*, 169-177.

**110. Advantages of Jury Trial.**—Juries are an advantage both to the accused and to the juryman. To the former, because the facts connected with his guilt and innocence are viewed from the standpoint of common sense rather than of law. The jury disregards technicalities, but places the emphasis upon the right or wrong involved. It takes into account the circumstances, the motive, and the conse-

<sup>1</sup> Nevada, California, Washington, Idaho, Utah, Montana, and Nebraska do not require a unanimous vote to render a verdict in civil suits, and four States allow 8 to 10 members of the jury to decide cases involving minor crimes. In all of the other States an *unanimous* vote of the jury-men is essential to a verdict.



quences, so that if it errs at all, it errs on the side of leniency.

To the citizen, the jury gives opportunity for civic education. It brings him into touch with the work of administering the law, and makes him part of it; and, in so doing, gives him clearer conceptions of legal rights and methods, and fits him to exercise his duties as a citizen with greater knowledge and to better purpose.

**111. The Disadvantages of Jury Trial.**—The main question is whether these advantages are worth what they cost, whether they apply to all forms of jury trial, and whether they are not, after all, but partially secured on account of the numerous exemptions from jury duty. Certain it is that the exemption of professional men, and the frequent refusals of attorneys to accept as jurymen men who have formed opinions regarding the case to be tried, have given rise to a popular belief that only the ignorant are desired as jurors—a belief not well founded in most localities. In any civil case involving knotty problems of law, the ordinary juror is almost of necessity incompetent to render a just decision, while in a lawsuit or criminal case where a strong appeal can be made to the emotions or to prejudice, the jury is likely to be unduly influenced in its verdict. The fact that a lawyer who has a weak case almost invariably asks for a jury trial is an indication that the jury errs often on the side of leniency. In short, unrepresentative of the communities as our juries must be under present conditions, they often defeat the ends of justice, in civil suits, through their ignorance, and, in criminal cases, through their prejudice.

Benefits to  
jurymen.

Train, *Prisoner at Bar*,  
158-161.

Abuses and  
defects.

Baldwin,  
*Mod. Pol. Institutions*,  
117-140.

Train, *Prisoner at Bar*,  
205-223.

#### General References

Hart, *Actual Government*, pp. 151-166.

Bryce, *The American Commonwealth*, abridged ed., pp. 347-355.

Wilson, *The State*, §§ 1147-1173.

Willoughby, *Rights and Duties of American Citizenship*, pp. 94-109.

Baldwin, *The American Judiciary*.

Train, *The Prisoner at the Bar*.

### Topic

THE JURY SYSTEM: Wilson, H. H., in *Popular Science Monthly*, 24 (1883), 676-686; Townsend, W. K., in *Forum*, 22 (1896), 107-116; Thomas, E. A., in *Forum*, 3 (1887), 102-110; Stephens, C. H., in *Popular Science Monthly*, 26 (1884), 289-298.

### Studies

1. Appointment, tenure of office, and compensation of judges. Baldwin, *The American Judiciary*, pp. 311-343.
2. Right of the courts to interpret and set aside laws. Baldwin, *The American Judiciary*, pp. 81-97.
3. The bench and the bar in America. Bryce, *American Commonwealth*, II, Chapters 67, 68.
4. The grand jury. Train, *The Prisoner at the Bar*, pp. 81-101.
5. The law's delays. Train, *The Prisoner at the Bar*, pp. 102-128.
6. Delays and defects of the enforcement of law in this country. Taft, W. H., in *North American Review*, 187 (1908), pp. 851-861.
7. The witness. Train, *The Prisoner at the Bar*, pp. 224-240.

### Questions

1. How many grades of courts are there in this State? Give the name of each.
2. How many judges constitute the highest court? How are they selected? What is their term of office? Where are the sessions of the highest court held?
3. Answer the same questions for the lower courts.
4. How are jurymen selected in this locality? Do they serve without pay? Who are exempt from jury duty?

## CHAPTER IX

### THE PROTECTION OF THE PUBLIC

#### THE ENFORCEMENT OF LAW

**112. The Preservation of Order.** — The administration of justice is connected closely with that most fundamental of governmental functions — the preservation of order. Yet this is a task which rests upon the *general public* rather than upon the peace officers who enforce the laws. It is quite essential that our laws should define clearly and cover fully the offenses that individuals may commit against society; it is necessary that suitable, yet severe, penalties be designated for each crime; it is indispensable that offenders should be arrested and convicted for their crimes; yet all of these are inadequate without that public sentiment which not only discourages but condemns law breaking, which supports our criminal laws and their enforcement without question or hesitation. This can be seen by comparing the attitude of any community toward different laws. A law that the people dislike is disregarded with impunity, although the community may be noted in general as law-abiding.

Importance  
of public  
sentiment.

It is usually a matter of local pride that laws should be enforced and order kept within a locality, since the States do not maintain a state police, but leave the protection of life and property to the local officers. The problem is much more difficult in *cities* than in rural districts, for it is a fact of common observation that there is a great deal more crime in cities than in the country. This is not so much the fault as the misfortune of great centers of popu-

Means of and  
success in  
suppressing  
disorder.

lation, for they become the haunts of hardened characters chiefly because it is easy to escape detection in a multitude.

Conditions  
in cities.

Fairlie,  
*Mun.  
Adminis-  
tration*,  
134-138.

**113. Peace Officers and their Duties.**—The larger the city, the greater the *proportion of policemen* to the population needed for the preservation of order. For example, in 1903, Scranton, with more than 100,000 inhabitants, had a police force of only 70, while Philadelphia employed 2510 policemen for her population but thirteen times as great. This is due to the greater congestion of population in large cities, and to the larger proportion of business transacted. It is caused also by the greater absorption of men in trade and their inability to assist in law enforcement by giving it their constant support—all of these conditions making it easier for persons to steal, evade ordinances, or do malicious mischief.

Numerous  
police  
duties.

Fairlie,  
*Mun.  
Adminis-  
tration*,  
144-149.

The duties which police officers are expected to perform are surprisingly numerous. A police force must preserve order, be keen to detect crime, and eager to bring offenders to justice. Among the *ordinances* that policemen are expected to enforce are those relating to nuisances which must be abated as soon as possible, street obstructions which must be removed, and excise laws. When a city wishes to have its saloons closed promptly at midnight and all day Sunday, it finds this impossible without an incorruptible police force, fully supported by public sentiment. Many keepers of gambling dens and other illegal resorts frequently pay well for police protection to avoid interference. Merchants are sometimes guilty of giving sums for the privilege of evading the laws, as cheaper and more convenient than obedience. A large amount of the *corruption* in cities has been in these forms, which are not avoided easily.

Peace  
officers.

City police forces are usually organized on a semi-military basis under a *chief of police*, with captains and lieutenants in the different police precincts into which the larger cities are divided. A *police board* usually makes rules for the

department, and has at least nominal power of appointment, often requiring physical and other tests of the patrolmen. Each *county* has a *sheriff* who is aided by several deputies. There are usually in addition *township constables*, who serve warrants and arrest offenders. In rural communities these duties are not often arduous, unless public sentiment is on the side of the law breakers.

**114. Unusual Means of Protection.**—These law and order forces may be supplemented in times of great danger by *posses* of citizens summoned by the sheriffs to help them put down rioting or insurrection. If even this means does not prove effective, the local officials may ask the governor to send militiamen to the scene of disturbance. The *militia* constitutes practically the army of the State and consists of the active forces who are trained and ready for service at any moment, and the reserves or men between 18 and 45 who may be called on in special emergencies to uphold the law.<sup>1</sup> These troops are used to protect property and to disperse any mobs that may be threatening violence. Ordinarily they are able to suppress disorder without loss of life, but severe conflicts are often waged between rioters and militiamen.

An even greater danger to society than riots is the *apparent indifference to lawlessness* found in many sections of this country. The large number of murders each year, coupled with the few convictions for serious crimes, and the rapid increase in the number of suicides seem to be evidence that our people are less law-abiding than was formerly the case. On the other hand, the interest aroused in these matters, the desire to secure punishment for law breakers, the decrease in the number of lynchings, showing a greater willingness to leave the administration of justice to the courts, are proof that even if conditions are worse than they were, our people are not really becoming indifferent.

Posses and militia.

Lawlessness and lynching.

Wright, *Prac. Sociology*, §§ 187-190, 198.

McClure, S. S., in *McClure's Mag.*, 24 (1904), 163-171.

*New Encyc. of Social Reform*, art. "Crime."

<sup>1</sup> Most of the seacoast States have a naval militia as well.

## THE TREATMENT OF CRIMINALS

Barbarous practices replaced by reformatory methods.

McMaster, *United States*, I, 98-102; VI, 96-100.

Wines, *Punishment and Reformation*, 147-154.

Methods used in state prisons.

Wright, *Prac. Sociology*, §§ 199-202.

Boies, *Science of Penology*, 125-132, 264-286.

Henderson, *Dependents, Defectives, Delinquents*, 276-307.

The local jails.

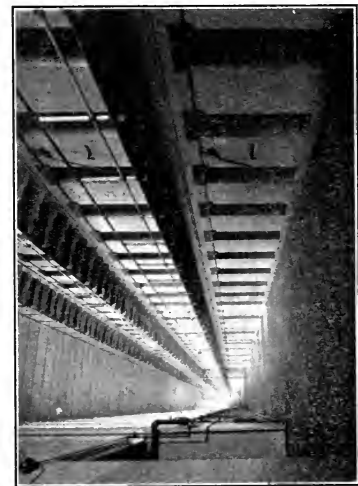
**115. Punishment of Crime in the Past.**—As the purpose of punishment for offenders has changed in recent years, the methods now in use are distinctively modern. In colonial times imprisonment was almost unknown, *death* being the penalty for the most serious offenses, and some species of *public torture*, like the stocks or the whipping post, being used for minor crimes. During the early national period there were *prisons* for the incarceration of criminals; but these were always of the worst description, the prisoners being herded together irrespective of age, offense, and other conditions, while often the prisons were nothing but cellars or mines. The gradual introduction of state prisons and more enlightened public interest did away with the worst of these evils. As the world began to realize that severe and arbitrary methods increased rather than diminished crime, greater attention was paid to *reforming the criminal*, while schools for the care of neglected children and youthful offenders sprang up on every side. Repeated efforts have been made to raise the standard of the local prisons, or jails; but, in spite of the progress made by a few States in some directions, the conditions in local institutions are still serious.

**116. Treatment of Adult Criminals.**—*State prisons* are reserved for the worst classes of criminals sentenced by the courts, the persons convicted of minor offenses being confined in local jails or penitentiaries. The methods used in the prisons vary greatly, but the discipline is of necessity fairly rigid. Ordinarily employment is provided, chiefly for the purpose of keeping the prisoners busy, but partially to help pay the expenses of the prisons. A premium is placed upon good behavior, by reducing the length of the sentences from ten to thirty per cent for satisfactory conduct. Quite frequently *indeterminate sentences* are used, the judge fixing a maximum and a minimum limit for the sentence, and the prison authorities deciding when it is wisest to release the prisoner.

When a person is sentenced for a short time, he is usually sent to the *county penitentiary*, of which there are a great number. If awaiting trial, or held as witness without bail,



MAIN BUILDING



A CELL BLOCK



MACHINE SHOP

STATE REFORMATORY, ELMIRA, N. Y.





he is confined in the same or in some *local jail*. Most of these institutions seem to have taken no share in the great advance movement for better prisons and better methods. Ordinarily they are unhealthy; often they are worse. No work is provided in most instances except possibly on a *chain gang*, neither is there any classification of prisoners according to age or crime. As all are thrown together, and idleness prevails, local prisons cannot be said to be effective agencies in the prevention of crime.

In some States no prisons, state or local, are provided for the permanent retention of prisoners, and the *labor of the convicts is sold* to contractors who take entire charge of them, often giving them the poorest of food and treating them with barbarity. The usual results are all that even a system of punishment should not include, and the only attempted justification of the disgraceful system is the annual sum paid for the services of the convicts.

**117. Reform of Juvenile Offenders.**—Society's change of attitude toward criminals is nowhere so conspicuous as in its treatment of youthful citizens who break the laws. Since the crimes of even adults are considered to some extent the results of disease, an effort is made to correct in children physical defects which may cause lawlessness, and to give them incentives to better living. In most of our large cities youthful offenders are now tried in *special juvenile courts*, where justice is tempered with so much mercy that first offenders are almost invariably placed upon *probation* for several years, during which they are kept employed, if possible, and required to report regularly to a court officer. The value of the work of reformation being accomplished by the famous "boy's judge," Ben. B. Lindsay of Denver, and other conscientious and able jurists in these courts cannot be estimated.

When a youth can no longer be allowed his freedom on probation, he is sent to one of the *state reformatories* for juvenile offenders which are found in almost every part of

Wines, *Punishment and Reformation*, 313-315.

Lease system.

Blackburn, B. F., in *Leslie's Pop. Mag.*, 53 (1902), 595-606.

Juvenile courts and probation.

Bjorkman, F. M., in *Rev. of Revs.*, 33 (1906), 305-311.

Boies, *Science of Penology*, 245-263.

Reform schools.

Boies,  
*Science of  
Penology*,  
293-297.

our country. By means of strict discipline, by training the boys and the girls to use their minds and their hands to advantage, and by teaching them self-control and the rights of others, an earnest and fairly successful attempt is made by these schools to change them into useful citizens. Often their later careers are watched to prevent the graduates from reëntering a career of crime, for the difficulties encountered by a man who has served a sentence in a prison or reform school are very great, even when he desires to follow the right path.

### PROTECTION OF THE PUBLIC HEALTH

General  
health  
laws.

**118. Contagious Diseases.**—There has been a great advance during the last quarter century in the demand for more complete laws protecting public health. Those now in use include laws to prevent the *introduction or spread of contagious or infectious diseases*, laws requiring the adoption of strict *sanitary regulations* in cities, those which prescribe *standards for food* of different kinds as well as laws regulating the *sale of drugs* and the practice of medicine.

General  
quarantine.

Wyman, W.,  
in *Forum*,  
26 (1898-9),  
684-692.

There is comparatively little danger from great *epidemics* as in the past, first, because people realize that these have been fostered by filth, and, second, because at all our ports strict *quarantine* is established, if there is possibility of introducing any plague. This combination of removing probable causes and of exclusion has proved quite effective. The destruction in swamps of mosquitoes that carry yellow fever germs has eradicated to a large degree that terrible scourge. The national government does an important work in preventing the introduction of disease from abroad by medical inspection of immigrants (§ 290), and by supplementary quarantine regulations.

Local  
quarantine.

When people are crowded together as in large cities, extra precautions are necessary to prevent the introduction and spread of disease. The *city health department*, with its phy-

sicians and inspectors, has especial charge of all cases of contagious or infectious diseases, which are carefully isolated so that others may not be infected. When epidemics are raging, an entire city or some section of it is subjected to very strict quarantine to confine the danger within a limited area. So successful have these sanitary regulations become that the proportion of deaths from the more common infectious diseases is now very much smaller than a few years ago, while the terrible curse of smallpox has almost died out, owing largely to the use of vaccination.

**119. Sanitation.**—In cities, particularly, there is especial danger from diseases like typhoid fever, which are developed from an impure supply of water, or which come from defective plumbing, an inadequate supply of fresh air, the accumulation of dust, rubbish, or filth in yards or streets, and, more than all else, a defective system of sewage disposal.

General  
sanitary  
measures.

In the country and in cities a century ago each householder had his own well, but allowed refuse to collect on his premises or to drain into the nearest depression. If lots are large and near neighbors are not numerous, the risks of contamination may be considerable, but not serious. In cities a failure to keep the *water supply free from impurities* produces quickly disease and death. Where cities depend on near-by sources of water supply, as do many of those near the Great Lakes or on large inland rivers, some wastes of that city or other cities are sure to be found in the water used for drinking. Some cities aim to secure pure water by carrying it long distances from lakes whose watersheds are cleared of possible impurities. Others use some system of filtering the water, following the lead of many European cities. Others seek only to remove the chief sources of contamination by disposing of their sewage in some less dangerous way.

A supply  
of pure  
water.

Zueblin,  
*Am. Mun.  
Progress*,  
102-105,  
116-120.

To the plumbing and building inspectors falls a share of the life-saving work, for, particularly in large cities, a fair

Building  
regulations  
and health.

Wright,  
*Prac. Sociology*,  
§§ 80, 81.

De Forest,  
R. W., in  
*Annals Am. Acad. Pol. Sci.* 23 (1904),  
297-310.

Veiller, L.,  
in *Annals Am. Acad. Pol. Sci.*,  
25 (1904),  
248-272.

Street  
cleaning.

Zueblin,  
*Am. Mun. Progress*,  
76-81.

Garbage  
and refuse.

Zueblin,  
*Am. Mun. Progress*,  
84-87.

Sewage  
disposal.

percentage of the mortality, particularly among children, can be traced to *defective plumbing* or to dark, crowded, *sunless tenements*. As we have begun to realize the curative powers of sunlight and fresh air, new interest has been taken in the crusade waged, especially in New York and other large cities with an extensive slum district, against the old style tenement. In some cases, the buildings covered seventy-five per cent of the ground area of an entire block, all air shafts being small and a large percentage of the rooms sunless. The notable work performed by the New York Tenement Commission and its friends is well known. The abatement of the *smoke nuisance* and the destruction of dangerous gases from factories is a necessary measure for the public health in many Eastern cities.

**120. Disposal of Wastes.** — *Clean streets* are necessary for the health of city dwellers, for every wind carries multitudes of germs from the dust or filth of pavements. The improvements wrought in New York, 1894-1898, by one man, Colonel Waring, with his "white angels" was marvelous. Even more remarkable was the work begun under his direction in Havana during the three years the Americans controlled the government of that Cuban metropolis.

The collection and disposal of *rubbish* and *garbage* is one of the serious problems of American cities. Although this necessary sanitary work is performed usually by city agents, the usual process of mixing garbage, ashes, and rubbish, the leaving of odorous cans on sidewalks, sometimes for hours, the offensive burning of the refuse near the cities without properly constructed *crematories*, all of these are small credit to Americans who wish only healthy, clean, and modern methods.

The most important of the city's sanitary problems from the engineering and health points of view is the disposal of *sewage*. Practically all large cities have adopted a *network of sewers* through which the sewage is carried from higher to lower ground through outfall sewers to some place fairly



Courtesy of Street Cleaning Department, New York City  
DISPOSAL OF WASTE, NEW YORK CITY



A MODEL MILK DEPOT



distant from the city. This removes the immediate danger from accumulation on small city lots, but it may not solve the entire problem. Chicago found that her sewers emptying into Lake Michigan ruined her water supply. At great expense a drainage canal was constructed to carry most of the sewage into the Illinois river. Some cities are following a European plan of *separating the solids in refuse, garbage, and sewage*, using the residue, after treatment, for fertilizer. One has established a sewer farm on which alfalfa and English walnuts are raised.

Zueblin,  
*Am. Mun. Progress*,  
105-109.

**121. Pure Food Regulations.**—During recent years there has been a marked advance in the regulation of food products by our governments. This has led to *pure food laws* enacted by Congress (1906) and by the majority of the state legislatures. Most of these laws require the manufacturers of *foods* and *drugs* to state the *ingredients* of their product, giving in detail the amounts of substances that may be poisonous or might be considered injurious. Investigations had shown that most jellies and flavoring extracts, for example, did not contain any of the article mentioned on the label. *Coal tar dyes* that were misleading rather than harmful were used in great quantities, *preservatives* like benzoic acid were to be found in considerable proportions, and a great deal of the butter sold was oleomargarine. There were no restrictions on the *patent medicines* sold everywhere. The new laws aim to give each consumer a chance to ascertain the real nature of the article he is purchasing—they do not guarantee the excellence of any food or drug. Their efficiency depends chiefly on the provisions made for the inspection of goods and enforcement of the laws.

Effect of  
the pure  
food laws.

Ayers, E. A.,  
in *World's Work*,  
14 (1907),  
9316-9322.

Besides these general laws, there are numerous local regulations. Most cities require that all *milk* furnished by dairies shall be of a certain minimum quality, that dairies shall be inspected and kept clean, and that no preservatives shall be used in the milk. *Meat* inspectors are supposed not only to supervise carefully the houses where animals are

Work of  
local food  
inspectors.

Johnson, C. C., in *Rev. of Revs.*, 36 (1907), 585-593.

killed for food, but to prevent the sale of spoiled meats or fish, or meat kept from spoiling by excessive quantities of preservative. A similar work is performed by *fruit* inspectors, who condemn fruits and other perishable foods that have been kept too long.

Precautions taken to prevent fires.

Wind-müller, L., in *Forum*, 36 (1904), 273-279.

Crosby, E. V., in *Annals Am. Acad. Pol. Sci.*, 26 (1905), 404-418.

Freitag, J. K., in *Engineering Mag.*, 31 (1906), 321-328.

**122. Protection against Fire.**—Far more property is destroyed by fire than by all other agencies, the annual loss in the United States from that source being \$250,000,000. With houses close together, as in cities, and great danger that a fire in one will be communicated to the next, *building laws* are necessary to prevent fires altogether, and *fire departments* equipped with modern apparatus must be maintained. If most of our buildings were constructed of brick or stone, as in Europe, nine tenths of the risk would be removed. As it is, there is usually a "fire limit" within which wood may not be used for construction. Permits are required before any building is erected or an addition made, but our laws are lenient and laxly administered, and *in many cities our fire departments are totally inadequate* to the needs. In 1871 the business sections of Chicago and Boston were practically destroyed by fire, and in 1904 a large part of that in Baltimore suffered similar loss. In 1904, also, nearly 600 people lost their lives in the Iroquois Theater at Chicago because the fire rules of the city had not been enforced properly. The terrible experience of San Francisco, where eight square miles of buildings were destroyed after the earthquake, with a total loss of more than \$200,000,000, should teach a wholesome lesson. The United States government buildings were built so substantially as to withstand the terrible heat which destroyed many so-called fire-proof structures. The failure of the water supply, which could not be blamed entirely on the earthquake, was the chief cause of the great loss of life and property.

Modern fire departments.

Our best city governments now have improved electrical devices for sending in fire alarms, and their fire departments include the latest equipment of chemical engines, extension





I



A  
FRAME BUILDINGS

B  
THE AVERAGE CITY BUILDING



C  
"SLOW-BURNING"  
CONSTRUCTION



D  
SO CALLED  
"FIREPROOF"  
CONSTRUCTION



E  
REALLY  
FIREPROOF  
BUILDINGS

## DEFECTIVE BUILDING CONSTRUCTION IN THE UNITED STATES

With the annual losses that result

Courtesy of the Outlook Co.

Zueblin,  
*Am. Mun.  
Progress*,  
65-69.

cranes, and more common apparatus. Heroes are common among the men who protect our cities from fire.

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- Hart, *Actual Government*, pp. 564-582.  
 Wright, *Practical Sociology*, pp. 350-389.  
 Wines, *Punishment and Reformation*.  
*New Encyclopedia of Social Reform*, articles on "Convict Labor," "Crime," "Elmira Reformatory," "Juvenile Courts," "Lynching," "Penology," etc.  
 Boies, *Science of Penology*.  
 Zueblin, *American Municipal Progress*.  
 Baker, *Municipal Engineering and Sanitation*.

### Topics

1. DIFFERENT PRISON METHODS: Ford, *American Citizen's Manual*, Part II, pp. 112-124; Wines, *State of Prisons*, pp. 106-113; Wines, *Punishment and Reformation*, pp. 220-228; Wright, C. D., in *North American Review*, 164 (1897), 273-282, and in *Practical Sociology*, 378-389; Boies, *Science of Penology*, 125-132, 264-286; Andrews, W. P., in *Forum*, 13 (1892), 232-245; Fort, J. F., in *Forum*, 32 (1902), 730-736; Galvin, G. W., in *Arena*, 32 (1904), 577-586; Whitlock, Brand, in *Everybody's Magazine*, 16 (1907), 579-589.
2. JUVENILE COURTS AND THEIR WORK: *Charities*, 13 (1905), 327-357; Webster, H. K., in *American Magazine*, 61 (1906), 394-402; Fallows, A. K., in *Century*, 73 (1906), 253-259; Steffens, L., in *McClure's Magazine*, 27 (1906), 563-582, 28 (1906), 74-88, 162-176.
3. THE CONTEST FOR PURE MILK: Fallows, A. K., in *Century*, 66 (1902), 555-565; Phelps, C. A., in *Metropolitan Magazine*, 26 (1907), 397-410; Abel, M. H., in *Delineator*, 66 (1905), 908-917; Sayles, J. E., in *Charities*, 17 (1907), 677-684; Godfrey, H., in *Atlantic Monthly*, 100 (1907), 252-260; Adams, S. H., in *McClure's Magazine*, 19 (1907), 142-149.

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1. The abuse of the police power. Kudlich, H. C., in *Forum*, 24 (1897), 487-501.
2. Shameful miscarriage of justice. Fuller, H. B., in *World's Work*, 13 (1906), 8221-8226.
3. Means of preventing lynchings. Pell, E. L., in *Review of Reviews*, 17 (1898), 321-325.

4. Methods of the Elmira Reformatory. Call, A. D., in *Education*, 22 (1902), 587-603.
5. The wastes of a great city. Woodbury, J. McG., in *Scribner's Magazine*, 34 (1903), 387-400.
6. The utilization of city garbage. Waring, G. E., in *Cosmopolitan*, 24 (1898), 405-412.
7. The fight with filth and disease in New York slum. Riis, *The Battle with the Slum*, pp. 76-153.
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10. Methods of fighting fires. Spears, J. R., in *Scribner's*, 9 (1891), 54-64; Hubert, P. G., Jr., in *Scribner's*, 32 (1902), 449-466.
11. The tremendous waste from fires in the United States. Fitzpatrick, F. W., in *Outlook*, 88 (1908), 937-945.

### Questions

1. What is the size of the police force of this city? What are the duties of the police officers, according to the city ordinances?
2. Name the principal prisons of this State; the reformatories. Are our institutions using modern methods? Is there a juvenile court in this county?
3. Look up the pure food law of this State. Has this city any regulations that insure pure milk and meats?
4. Is there a fire district in this city in which frame buildings are not allowed? How much was spent last year for fire protection?

## CHAPTER X

### CARE FOR PUBLIC WELFARE

#### THE PUBLIC SCHOOLS

Relation of  
State and  
localities.

**123. The State Systems of Education.**—There is no task of state and local government which outranks in importance that of providing a common school education at public expense. This subject illustrates admirably the relation existing between the State and the localities everywhere, since the general plan of the school system is arranged by general state laws, administered by local school officials.

Provisions  
of the  
school law.

The *state school law* determines whether the district, the township, or the county shall be the unit for school administration, and what officers it shall select, with the powers of each. It also prescribes a minimum list of the subjects which must be taught in every school, the minimum number of months in the school year, and the qualifications of teachers of the different grades.

State  
boards of  
education.

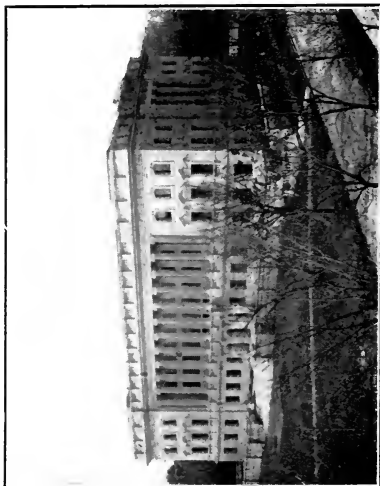
The *state departments of education* have superintendents, aided in most of the States by *state school boards*. The school boards are usually appointed by the governors, the superintendents being elected more generally than appointed.

Boone, *Edu-  
cation in  
U.S.*, 101-109.

The chief work of the state boards consists in arranging and revising the state school law for submission to the legislature, and in adopting other means for improving the schools of the State. In a few States provision is made for state text-books, published under the direction of the state board by the public printer, or selected by the board from the regular text-books. In several States, text-books are furnished at public expense.



UNIVERSITY HALL, MICHIGAN

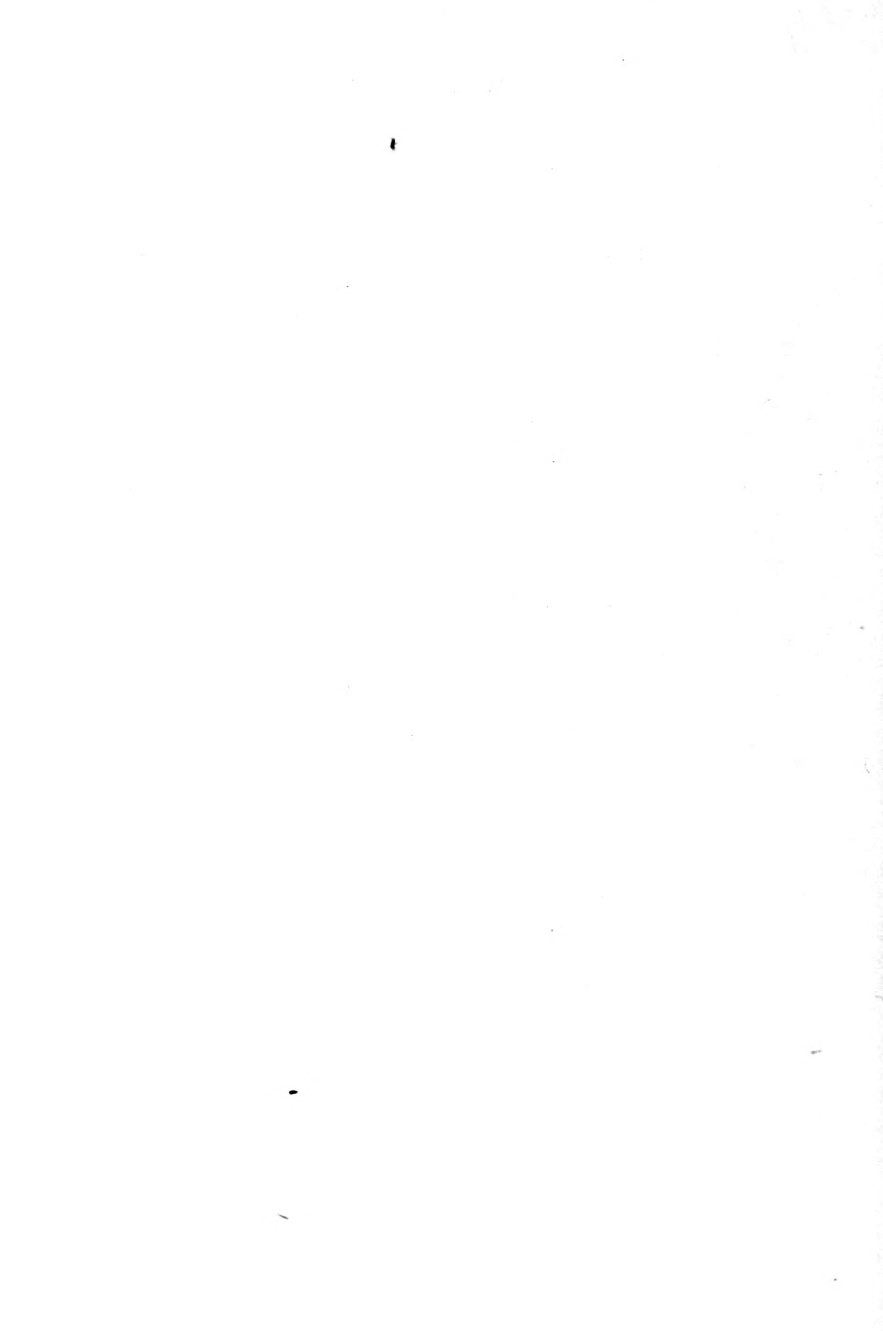


LIBRARY BUILDING, WISCONSIN



STATE UNIVERSITIES

MAIN BUILDING, TEXAS



The *state superintendents* usually visit the different counties, examine schools, and gather information for the state boards. In several States, the boards or the superintendents may suspend teachers for cause, or revoke certificates issued by the state or county boards.

State  
superin-  
tendents  
of public  
instruction.

**124. State Schools.**—The public school systems of most of the States include (in addition to the local schools), normal schools, agricultural colleges, and state universities. The *normal schools* are institutions for the special training of teachers. Until these normal schools were established, teachers were not only poorly prepared for their work, but were only half educated, as a rule. The majority of the present normal schools are well equipped, and are doing much to raise the standard of efficiency among the teachers of the country. Many of those that rank highest now require a high school education for entrance.

Normal  
schools.

Boone, *Edu-  
cation in  
U.S.*, 125-148.

*Agricultural colleges* have been established in most of the States. By a law passed by Congress in 1862, 30,000 acres of public land were given to each of the States for every congressman to which the State was entitled, the proceeds arising from the sale of these lands being devoted to agricultural education. Experiment stations are often conducted in connection with these institutions, the national government granting appropriations each year for every agricultural school and *experiment station* (§§ 284, 286).

Agricultural  
schools.

Bailey, L.  
H., in  
*Century*,  
72 (1906),  
733-738.

Powell, E.  
P., in *Inde-  
pendent*,  
63 (1907),  
253-259.

The *state universities* found in nearly one half of the States are among the largest and best in the land. They are co-educational institutions, offering an exceedingly varied number of courses, in engineering work as well as in professional schools. They represent the highest development of the American idea that education should be at public expense, for instruction is ordinarily free for those students who live within the State. Many of these universities have rendered especially valuable service to the cause of education by aiding the grammar and high schools, and by introducing better and more uniform methods in local education.

State  
universities.

Hart, *Actual  
Gov't*, § 235.

Draper, S.,  
in *Outlook*,  
68 (1901),  
768-774.

Harwood,  
W. S., in  
*Scribner's*,  
34 (1903),  
481-490.

Duties of  
county  
school  
boards and  
of rural  
school  
trustees.

Boone, *Edu-  
cation in*  
*U.S.*, 113-116.

Grammar  
schools and  
special  
schools in  
cities.

Boone, *Edu-  
cation in*  
*U.S.*, 109-113.

The selec-  
tion of  
teachers.

**125. Local School Administration.** — The officials who look after school matters are usually three trustees for each district or township, and above these the county board of education and the county superintendent. In all of the States in which townships do not exist or are not well developed, the *county boards* have important duties in granting certificates to teachers, selecting text-books for the county schools, providing for uniform courses of study, and raising money for school purposes. In most of the other States, the burden of school duties falls upon the *trustees* of the districts or townships, who almost invariably have charge of selecting teachers and of erecting school buildings, and who may be obliged to assume part or all of the tasks mentioned above in addition. The district system is still more common than that of the township, but, if the districts are small, it is impossible to secure a satisfactory grading of pupils, or careful supervision by local superintendents, which is one of the greatest aids to successful work.

Our *cities* are likely to have better opportunities for good schools than the country districts, because a more perfect system of grading is possible and because greater inducements are offered to teachers. To what extent these opportunities are utilized depends chiefly upon the public spirit of the school board. Most of our cities have, however, gone much farther than the laws require. Almost all have established free *kindergartens*, and high schools with many different courses of study. Some give instruction in *manual training* throughout the higher grammar grades, and a few have established separate *technical high schools*.

A custom which is practically uniform throughout the country, and which is, perhaps, more than anything else, responsible for inefficiency in the schools where that exists, consists in electing new teachers for a *term of one year only*, and sometimes of dismissing them without good reason. In a few cities a fair permanency of tenure is assured, and appointments are made by the superintendent.





PIONEER AGRICULTURAL SCHOOL, MINNESOTA



CLASS STUDYING CORN, AGRICULTURAL SCHOOL



AGRICULTURAL HIGH SCHOOL, SECOND CONGRESSIONAL DISTRICT, GEORGIA



**126. School Finances.** — The public interest taken in our schools is shown by the large sums expended annually, for the common schools cost more than \$300,000,000 annually, about \$3.50 for every person in the United States and nearly \$17 for each pupil enrolled in the schools. The aid given by Congress to the newer States has undoubtedly exerted a healthful influence in quickening this popular interest. Ever since 1802 Congress has given as the basis of an educational fund to each of the States formed out of the "public domain," *i.e.* the land directly controlled by Congress, one section of the thirty-six in each township (see § 279), and since 1848, two sections. These *school lands* have been sold and the proceeds devoted to developing the schools in these States. By far the larger part of the school revenue is, however, obtained from *regular taxation* (§§ 149–152). Many States collect state school taxes and then distribute this sum to the counties or townships in proportion to the number of scholars in each who attend school regularly. In this way help is given to the poorer districts and to those which are most earnest in their school work. In most of the States, the taxes are purely local and are as large as each community thinks it needs and can afford.

Sources of revenue.

Boone, *Education in U.S.*, 88–93.

*New Encyc. of Social Reform*, 425.

## PUBLIC CHARITIES

**127. The Problem.** — There are in every community certain persons who are unable or unwilling to provide for themselves. Most of these have relatives who see that they are provided with a home and the necessities of life. The rest are a burden on society in general, and must be supported by private charity or at public expense. The first duties of the public are to separate them into *classes according to their disability*, to distinguish between the deserving and the unworthy, and to provide suitable help for those who may be entitled to receive it.

Features of the problem.

Folks, H., in *Annals Am. Acad. Pol. Sci.*, 23 (1904), 268–280.

Working  
out the  
problem.

Devine, E.  
T., in  
*Annals*  
*Am. Acad.*  
*Pol. Sci.*,  
21 (1903),  
343-362.

Public  
or private  
care for  
dependents.

Henderson,  
*Dependents,*  
*Defectives,*  
*Delin-*  
*quents*,  
40-51, 138-  
150.

Children's  
homes.

Warner, *Am.*  
*Charities*,  
220-228.

Henderson,  
*Dependents,*  
*Defectives,*  
*Delin-*  
*quents*,  
98-120.

These tasks constitute a problem of no mean proportions ; for although we may determine easily what classes deserve aid and which require punishment, the separation of those who are worthy from those who are not is sometimes impossible. An impostor may remain long undetected and have become a social parasite, whereas funds may be withheld from needy families. There may also be very great difference of opinion about the best way of aiding any particular class of dependents. Especially is this the case with the most general problem of all — the question of *public*, or *private*, charity.

We do not question the justice of the doctrine that these unfortunates should be a *public charge*. Society is a unit, and we believe that society is under obligation to care for its poor and for those to whom nature has denied some faculty, just as a family is expected to provide for those of its members who are unable to care for themselves. This does not mean that most of the expenditures for charitable purposes should be made through government officials, for private organizations can often much more easily learn whether those applying for help are deserving. In fact, government now does little more than care for those dependents who live in *charitable institutions*.

**128. Care of Dependent Children.** — Two classes to whom society owes the best possible care are those children who have no one to look after them, and the children who have some notable physical or mental defect. If private enterprise fails to provide suitable children's homes, public institutions must be constructed for the purpose of keeping *orphaned little ones* out of the streets and away from evil influences. This is felt to be a most necessary step in the process of preventing *crime*, and consequently should be undertaken by the localities for their own safety, if not for the sake of the children themselves.

A second class of dependent children includes those afflicted with some *physical defect* — those that are blind,

deaf, or dumb. If society owes the advantages of a free education to its normal children as the best safeguard of its free institutions, surely the education of these unfortunates is a duty rather than a form of charity, not to be neglected under any circumstances. Although these "defectives" may not be prepared for a full measure of the activities of citizenship, this education opens to them many of the opportunities and enjoyments of life, of which they would otherwise be deprived by their infirmity. The equipment furnished, the methods used, and the instruction given in these schools are usually of a high character.

Public institutions for *weak-minded children* are even more essential than those for physical defectives, because weak-minded children are so much more helpless and more apt to be public charges. Although society does not begrudge the care necessary for such unfortunates, it is seeking to prevent the multiplication of those whose existence can be only a burden to themselves and their fellows. The existing schools are maintained with an idea of training these children to do well a few mechanical duties and of developing in them a stronger mentality.

**129. Care of the Insane.**—One class of dependents whose care is left to the government exclusively is that of the insane. Our government performs this task, not only because it is a *necessary charity*, but, as many insane people are dangerous, for the sake of *protecting the public*. No person is, however, placed under the control of government officials until he has been examined and declared to be of unsound mind. Otherwise it would be possible for people that wished to be relieved of some eccentric relative who was perfectly sane, to have the latter placed under restraint.

Public care of the insane varies greatly from State to State. (1) Many of the States compel each *locality* to look after its own, insane persons being left in poorhouses where they are systematically neglected or even maltreated. (2) In other States, the most violent patients are sent to

Schools for the deaf, dumb, and blind.

Henderson, *Dependents, Defectives, Delinquents*, 169-173.

School for weak-minded children.

Henderson, *Dependents, Defectives, Delinquents*, 174-182.

Why insane persons are a public charge.

Hamilton, A. McL., in *No. Am. Rev.*, 172 (1901), 241-249.

Treatment of the insane.

Warner, *Am. Charities*, Chap. XI.

Morey,  
Gov't of  
New York,  
§ 68.

Henderson,  
Dependents,  
Defectives,  
Delinquents,  
183-194.

Chance, B.,  
in *Outlook*,  
78 (1904),  
1031-1038.

Poorhouses  
and poor  
farms.

Henderson,  
Dependents,  
Defectives,  
Delinquents,  
71-82.

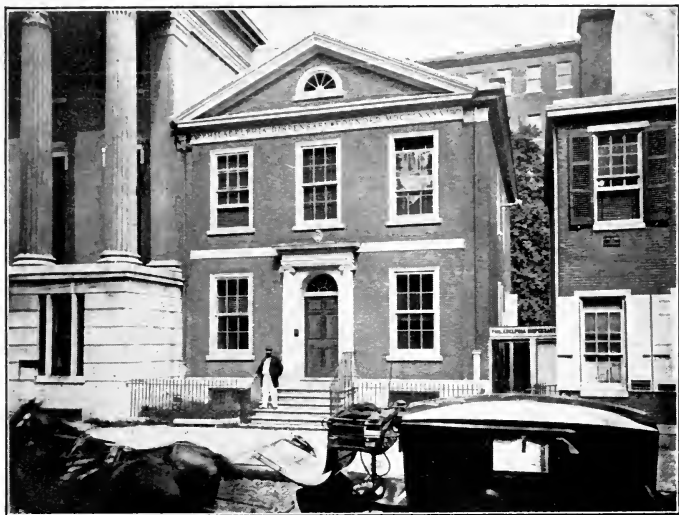
Warner,  
*Am.*  
*Charities*,  
Chap. VI.

*New Encyc.*  
*of Social*  
*Reform*,  
915-917.

*state institutions*, the others being placed in *local asylums*. (3) A few States care for all persons of unsound mind in *state hospitals*, which are worthy of the name, for insanity is regarded as a disease, and the patients are treated not as criminals to be punished, but as mental invalids to be cured. New York well represents modern methods in its care of its insane, several millions of dollars being spent each year for the benefit of the inmates of its eleven state hospitals. It is in advance of most other States not alone in its provision for hospitals under state rather than local supervision, but in its segregation of all insane persons accused of crime in two separate institutions controlled by the prison authorities of the State.

**130. Care of the Poor.**—Very much the largest number of those dependent on the public for charity become public charges because of their *poverty*. The character of the help given to the poor depends on the degree of their need. If they are not only destitute, but also aged or infirm and without relatives to whom they may look for support, they must be placed in public institutions. Few indeed are the localities that have no *poorhouse*, the care of these classes being left entirely with the local governments. In the northeastern part of the United States it is usually the *towns* which care for the poor, but in other parts of the country the *counties* must assume this duty. In a few poorhouses, those capable of working are compelled to contribute something toward their own support. Often poor farms are maintained, which are managed without help from outside, so that the institution is largely self-supporting. In many of these institutions the practical management is seriously defective, and often unpardonably brutal. This is especially the case where the aged, the young, the blind, the insane, the feeble-minded, and the sick are herded together.

*Outdoor Relief* is often granted by the overseers of the poor to those not destitute but needy. The chief danger of



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STATE INSANE HOSPITAL, MENDOCINO, CALIFORNIA





this entire system of relief is that it is likely to increase the poverty it is supposed to alleviate, because shiftless individuals will look to the government for help, when they should support themselves. For a few people most of the time, and for many people part of the time, some assistance of this kind is necessary. *Provisions, clothing, and fuel* are the articles most commonly furnished, much more being done in winter, or when work is scarce, than at other times. A few cities have established *public lodging houses*, wayfarers being furnished with beds for the night in return for a reasonable amount of work. Sometimes *temporary employment* is furnished through the government to those in great need, or in order to rid the community of those tramps who will leave if forced to find employment.

Ordinary forms of outdoor relief.

Warner, *Am. Charities*, Chap. VII.

Henderson, *Dependents, Defectives, Delinquents*, 52-70.

**131. Other Forms of Charity.** — There is perhaps no set of persons so deserving of sympathy and help as the *sick poor*. Needing skilled care, delicate food, and expensive medicines, or still more costly surgical attention, they are unable to protect themselves against the ills which, if unchecked, will cause death or lives of unending pain. For the care of such unfortunates, *public hospitals* are maintained in most cities and by many counties and towns. Physicians and nurses are paid by the public to look after the inmates of the hospitals. *Visiting physicians*, in addition, may spend a large part of their time without pay in attendance on the needy sick who are in their own homes. Those whose ailment is less serious can often obtain treatment gratis at the *dispensaries*, which are to be found in most of our large cities.

Care of the sick poor.

Henderson, *Dependents, Defectives, Delinquents*, 121-137.

Kirkbride, F. B., in *Annals Am. Acad. Pol. Sci.*, 23 (1904), 424-433.

It is customary, especially in cities, to *make appropriations* of large sums of money annually for the benefit of *private institutions* — children's homes, schools for defectives, hospitals, and others. This may be done because the heads of private institutions or organizations are able to discriminate better and are less likely to be imposed upon or defrauded, or it may be due to an unwillingness to grant help both

Public aid to private charities.

Warner,  
*Am.*  
*Charities*,  
Chap. XVII.

publicly and privately in cases where there is no good reason for the government assuming entire responsibility. Many cities which follow this plan have been singularly lax in supervising the expenditure of the public money contributed to private parties.

### GENERAL WELFARE

Benefits to  
the poor.

Zueblin,  
*Am. Mun.*  
*Progress*,  
242-275.

Riis, *Battle*  
*with Slum*,  
279-309.

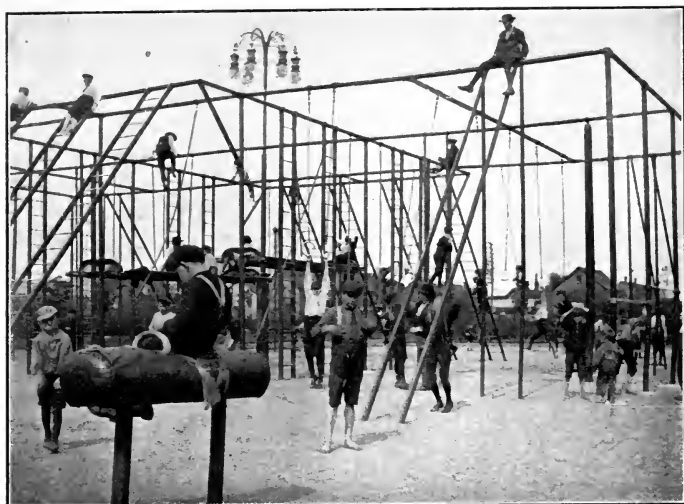
Harris, G.  
W., in *Rev.*  
*of Revs.*,  
32 (1905),  
574-580.

*World's*  
*Work*,  
8 (1904),  
4963-4979,  
11 (1906),  
7191-7205.

Circulation  
depart-  
ments.

**132. Parks and Playgrounds.**—Certain activities of our cities particularly have been extended for the purpose of developing a better and healthier class of citizens. Among these are the beautiful *public parks*, which appeal to public pride and the æsthetic taste of all citizens, with their drives, lakes, zoölogical gardens, and numerous forms of free amusements. Still more important are the *children's playgrounds* that have been established as breathing spaces in the tenement districts. In our larger cities playgrounds have been created on pleasure wharves, in roof gardens on the tops of school buildings, and in squares where rookeries have been demolished. For the children of the poor they have replaced the old playgrounds of dirty streets and dark alleys; they give room for sunshine, spontaneous play, and healthful sports. With the public swimming pools and bath houses, their influence for health and cleanliness remakes many lives. Band concerts and other forms of amusement on Sundays and evenings attract large multitudes of adults, to whom innocent amusement is a necessary form of recreation. To the multitudes whose days are spent in grinding toil, whose homes offer little or no attraction, whose vacations come as periods of enforced idleness when times are hard, the ever increasing number of parks and playgrounds are an inestimable blessing.

**133. Public Libraries.**—A silent, uplifting force but little inferior to the public schools is exercised by the free libraries that have been established in probably one half of the cities and villages in this country. Their work is valuable, even through the distribution of the lighter forms of fiction,



BOYS' PLAYGROUND, SHERMAN PARK, CHICAGO



MULBERRY BEND PARK, NEW YORK  
(On the Site of the Old Style Tenements)



which comprises at least one half of the volumes in circulation in most libraries, for most of these books are wholesome, interesting, and amusing. Through the *circulation* of the better classes of fiction, biographies, histories, scientific treatises, and many others, general readers have opportunities denied to them a quarter century ago. Where the patrons of the libraries are permitted access to the shelves and are allowed to examine books, the circulation is increased, and interest is awakened in other classes of reading. Most libraries have *juvenile departments*, from which books may be drawn by children of a reasonable age. They also help to awaken a taste for a better class of literature by loaning a large number of books at one time to the different schools of the city, where they are read freely by the pupils.

Almost as many magazines and books are consulted at the libraries as are withdrawn for circulation. Large numbers of the popular magazines and newspapers attract many to the *reading rooms*, while the scientific papers and well-selected works of *reference* are consulted by large numbers of scholars. Some of our finest libraries limit themselves to reference and consultation work, distributing no books whatever.

**134. Control of the Liquor Business.**—As intoxicating liquors are believed to be responsible for a large part of the poverty and crime in existence, governmental control of the liquor business is less for the development of public morality than for the protection of the public. The *general policy* of each State is decided by the entire State, either through the vote of the people registered in the constitution or by the legislature. Three systems<sup>1</sup> may be distinguished: (1) the *tax license system*, under which saloons may be established in any town or city of the State under certain conditions; (2) the *license system with a local option* which permits any

Zueblin,  
*Am. Mun. Progress*,  
177-193.

Elmendorf,  
H. L., in  
*Rev. of Revs.*,  
29 (1904),  
702-708.

Putnam, H.,  
in *World's Work*,  
10 (1905),  
6373-6377.

Reading and  
reference  
rooms.

Zueblin,  
*Am. Mun. Progress*,  
195-201.

Conditions  
and forms  
of control.

Wines and  
Koren,  
*Liquor Problem in Legislative Aspects*,  
1-21.

<sup>1</sup> On the dispensary system formerly in use in South Carolina, consult the *New Encyclopedia of Social Reform*, pp. 387-389.

town or county to prohibit the sale of liquors within its boundaries; and (3) *state prohibition*, under which the manufacture, as well as the sale, of intoxicants is forbidden throughout the State. In all cases the administration of laws relating to the sale of liquors devolves chiefly upon local officers.

The license system.

States which depend exclusively upon a system of licensing saloons may be classified according to the amount of the fee paid in return for the permission or license given. If the fee is low, *e.g.* \$50 or \$100 a year, the State is said to have a *low license* system, but *high license* is used if the fee is that amount per month. The fee varies in different parts of all States of course, being higher in the larger cities, where a more extensive business is possible. Other conditions are considered in granting licenses. Saloons must not be opened near churches, schoolhouses, or public parks. In many towns licenses may be revoked if liquor is sold to minors, or to any one on Sundays, but even when the law provides for these regulations, they are not enforced unless the general public really so desires. One of the chief objections urged against high license is that the high fee leads to evasion of the law and to illegal selling, for perfect enforcement of *any* liquor laws seems difficult to obtain.

Result of  
"State-  
wide"  
prohibition.

*New Encyc.  
of Social  
Reform,*  
970-972.

Corrigan, J.,  
in *Rev.  
of Revs.*,  
36 (1907),  
328-334.

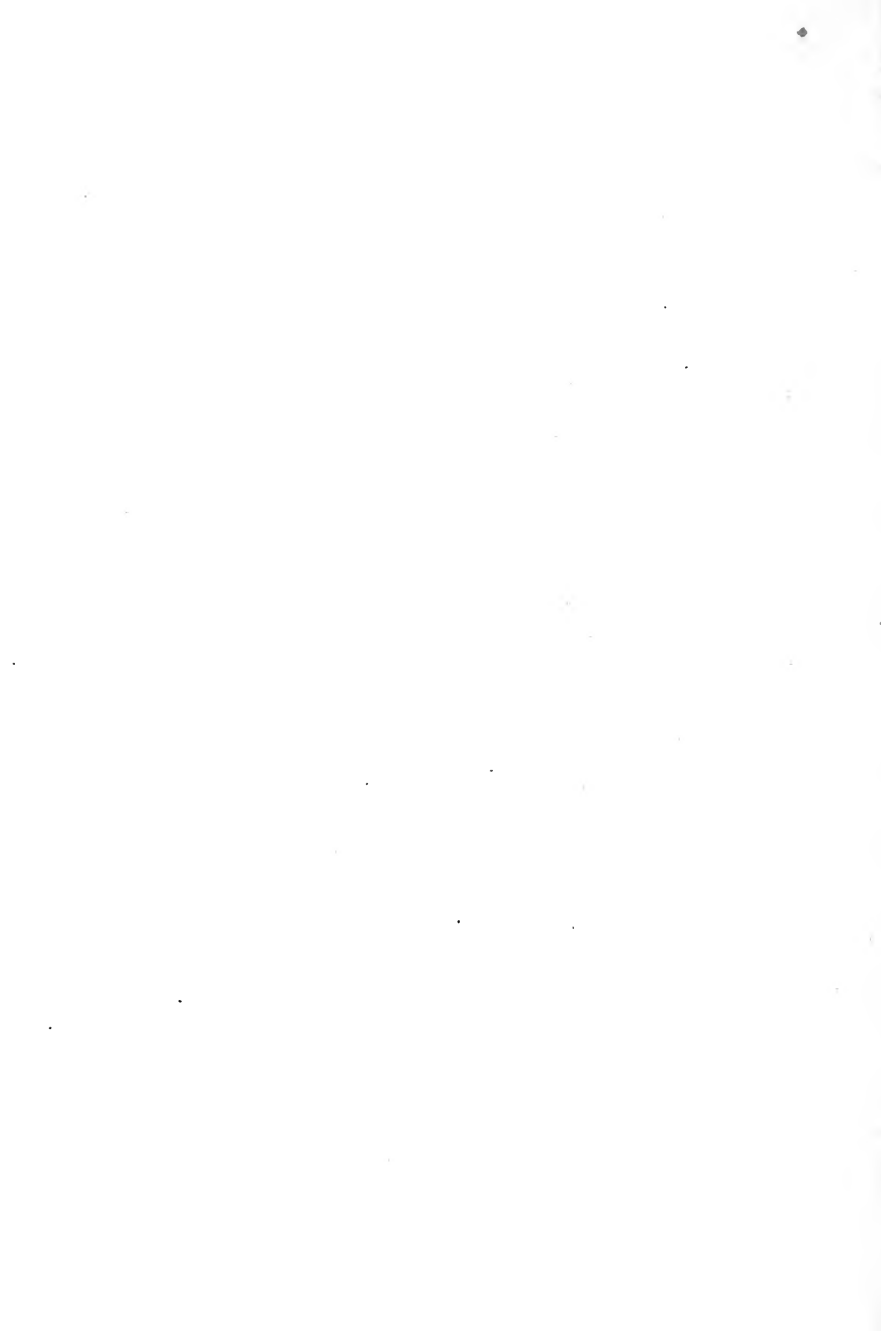
**135. Prohibition and Local Option.** — More than one third of the States at some time have prohibited the manufacture and sale of intoxicating liquors within their limits. At the present time, nine have such laws, and in one of these, Maine, the law has existed in various forms for sixty years. So far as *manufacture* is concerned, *prohibition* actually prohibits; but a different result may be noticed in connection with the question of *sale*, and the result is easily summarized: where the community earnestly favors prohibition, public sale is impossible, while private sale is difficult, and usually punished; where the community is indifferent, illegal traffic is common; but where prohibition is distaste-



ROCK CREEK PARK, WASHINGTON, D.C.  
(Overlooking the Zoölogical Gardens)



PUBLIC LIBRARY, BOSTON, MASS.





ful, as in many cities of size, there is little attempt to conceal the places where liquor can be obtained.

In about two thirds of the States, the towns, districts, or counties are permitted to decide, by popular vote, whether they will have "license" or "no license." By this method *local prohibition* exists over at least one half the area of the United States, but only in those parts where it is favored for personal or business reasons. It can readily be seen that the enforcement of the law in these localities is likely to be better than those of prohibition States, but the *difficulties* of enforcement are apt to be greater, because importation from neighboring towns or counties is easy. Although free from the glaring defects that characterize the administration of the anti-saloon law in some States that have prohibition, local option, nevertheless, encounters much the same class of difficulties as those found under prohibition.

Local option  
in practice.

*New Encyc.  
of Social  
Reform,*  
726-727.

O'Reilly,  
J. F., in  
*Independent,*  
63 (1907),  
564-567.

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Wright, *Practical Sociology*, pp. 177-207, 331-332, 390-403.  
Boone, *Education in the United States*, esp. pp. 79-116.  
Warner, *American Charities*.  
Henderson, *Dependent, Defective, and Delinquent Classes*.  
Wines and Koren, *The Liquor Problem in its Legislative Aspects*.  
*New Encyclopedia of Social Reform*, articles on "Charities," "Education," "Housing," "Liquor traffic," "Local option," "Pauperism," "Poverty," "Prohibition," "Temperance," etc.

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Boston; Lee, J., in *New England Magazine*, 27 (1902), 521-536.  
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13. The Parks of Chicago. Foreman, H. G., in *Century Magazine*, 69 (1905), 610-620; Perkins, D. H., in *World To-day*, 8 (1905), 268-274; Foreman, H. G., in *World To-day*, 13 (1907), 902-912.
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16. Golden Gate Park, San Francisco. Gibson, R. M., in *Overland*, 37 (1901), 735-765.
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18. Protection of Galveston from the sea. Davis, W. W., in *Review of Reviews*, 33 (1906), 200-205.

### Questions

1. What are the boundaries of this school "district"? How many schools are located in it? Learn the number of teachers, the total attendance of scholars, and the cost of maintaining the schools.
2. How many members are there in our school board? Do all go out of office at the same time? Is it the custom to reëlect these officials?

Who issues teachers' certificates? From whom do our teachers get their pay?

3. Is there more than one high school in this city? How many pupils attend it? Learn the number of pupils in all of the public schools of the city. What is the yearly cost of supporting the schools? Have we a public municipal library?

4. What forms of charity are administered by the local government under which we live? How successful has it been?

5. Name the principal parks of this city. Does the city maintain general playgrounds? special playgrounds?

6. Have we high license, low license, or prohibition? Is local option permitted in this State?



## CHAPTER XI

### SUPERVISION OF COMMERCIAL INTERESTS

Views of  
desirable  
relations.

**136. Government in its Relation to Business.**—Modern governments are very closely connected with the business interests of the people, although there is considerable difference of opinion regarding the closeness and character of these relations. Many people believe that government should limit itself to *warding off dangers* from which a business man cannot possibly protect himself; others advocate the greatest amount of aid to business, in the form of *favorable legislation* and actual *money subsidies*; but the majority believe that business should be *protected and promoted* as much as may be demanded by the best interests of the whole people.

Government  
and ordi-  
nary busi-  
ness.

So much of our ordinary business is transacted through corporations, which are really artificial persons created by the State, that *supervision of corporations* is essential. So much business, at least ninety-five per cent, is done not with cash, but on *credit*, that safeguards are necessary to preserve a credit system. *Contracts*, written or unwritten, play so large a part in commercial transactions that indefiniteness in the law of contracts or laws affecting parties engaged in business, or uncertainty in the enforcement of such laws, would be fatal to industry and commerce. Moreover, every line of activity is depressed by unjust, discriminating laws, and is benefited by the *wise, fostering legislation*.

Government  
and public  
interests.

Many undertakings are of such a nature that they must be performed or specially supervised by our governments. Canals or railways are *semi-public enterprises* or common carriers which cannot be allowed to manage their business

to the disadvantage of any person or community. Improvements of a public nature, like the location and improvement of *highways*, should not be left to private parties. Essentials like *water* for cities should be owned and managed by the public. Government must have special power of regulation, and, if necessary, prohibition over necessary but *dangerous or objectionable industries* such as powder factories, gas works, or garbage incinerators. In its final analysis the power to *regulate* must include, if necessary, the power to *prohibit*.

### TRANSPORTATION

**137. Public Highways.**— Among the most necessary improvements made by our governments or under their supervision are the streets of our cities and the rural roads. The *location* is the first question to be considered. City streets are usually laid out in convenient rectangular blocks, *civic beauty* having been disregarded in most of our cities. Washington is a notable exception, since its avenues connecting the public buildings give an impression like that created by Paris or Vienna. Very often, streets are located according to no definite plan, so that not only beauty but convenience is lacking.

Laying out  
city streets.

Robinson,  
*Improvement of  
Towns and  
Cities*,  
18-33.

The problem of locating city streets is much less serious than that of rural roads, the latter having been neglected even more than that of city streets. The earliest good roads in this country, constructed by private turnpike companies, usually connected important villages or cities, but since private construction has given place everywhere to government construction, which means ordinarily maintenance by towns or small counties, no definite principles of engineering or public policy have been followed. There has been no proper classification of *rural highways* as through roads or local roads. Little attempt has been made to find the *best route* between two centers of population, or have its feeders constructed at the right points, or along the best

Location of  
rural roads.

course. No account is taken of hills, which are crossed with *heavy grades* on both sides, or even rivers, which must be forded or bridged at considerable expense.

The right to lay out streets is given to the city council, and for rural highways is conferred usually upon the county boards. Streets are ordinarily cut through before the property becomes valuable, but at times it is necessary to open a new street or widen an old one at great expense. When streets or roads are needed, rights of way are obtained from the property owners if possible, at a price acceptable to the owners and the officials. If they disagree concerning the value of the right of way, the government exercises the *right of eminent domain*, which permits some court, after investigation, to condemn the property and to appoint referees, who fix a reasonable price which the government shall pay.

**138. Improvement of Highways.**—We Americans have not yet learned that, particularly in road making, the *best is the cheapest*. Most of our rural roads are broad, flat stretches of dirt, with heavy grades, and in rainy weather or in the spring, an appalling amount of mud. We are beginning to realize that a team can haul several times as heavy a load over a hard-surfaced road with minimum grades as it can on the ordinary dirt road in fair weather. At present, the cost of the property required for a road, of grading it and of surfacing it, is usually borne in the form of a *road tax* by all the property owners of the road district in which it is located. In many parts of the United States, farmers are allowed to “work out” their road taxes, contributing a certain number of days’ labor with or without teams. This custom is becoming rarer, for gradually road making is being reduced to a science. Since good roads are in the end found to be more economical than poor roads, the surfacing of the highways is now quite frequently left to engineers and their assistants. The national government has sent road-makers to different parts of the country, giving object les-

Process in  
securing a  
right  
of way.

The  
improve-  
ment of  
rural roads.

Potter, I. B.,  
in *Century*,  
43 (1892),  
803-820.

White, W. P.,  
in *Outing*,  
51 (1907),  
221-228.

National  
and state  
aid.



ROAD MAKING IN THE STATE OF WASHINGTON  
(Before and after improvement)





sons on the means of improving highways and showing the folly of poor roads even in thinly settled territory. Some of the States have expended large sums of money building good thorough roads, and some are following the lead of New Jersey, which grants to the localities from the state treasury a sum equal to the amount expended by each for good roads.

City streets are used so much more than rural roads that the need of *surfacing* is much greater. Streets are improved usually in such a way and at such a time as the majority of the owners of the abutting property may desire. For central streets the major part of the expense incurred in these changes is ordinarily borne by the city, the remainder being paid by special assessments upon the property on either side of the new street. Owners on most residence streets pay the entire cost of their improvements except for corners. The pavements in residence districts are much less costly than on business streets, as the wear and tear is much less. *Macadam* pavements of crushed rock are used frequently, *wood blocks* are often satisfactory, and a scientifically *oiled pavement* is found cheap and excellent if the travel is light. Business streets require *asphalt pavements* with deep concrete bases, or *heavy stone blocks*. *Cobblestones* are still used in some localities. Pavements are supposed to be kept in repair by the street department, and sprinkled by the sprinkling department, while the lighting department provides gas or electric lamps.

Street improvements are usually made by *private contract*, after the character of the improvements has been publicly advertised, and sealed bids have been presented to the council at an appointed time. The work of the successful contractors is inspected by the city's engineer and street superintendent, but frequently the claim is made that the contracts are not fulfilled, the work being poorly done, although the price paid by the city is higher than any individual would have paid for a similar service.

Surfacing of city streets.

Baker, *Mun. Engineering*, 14-23.

Fairlie, *Mun. Administration*, 227-238.

The non-enforcement of municipal contracts.

Supervision  
on private  
canals and  
on rivers.

Johnson,  
*Water  
Transporta-  
tion*,  
323-333.

State  
canals.

Johnson,  
*Water  
Transporta-  
tion*,  
333-343,  
382-385.

Wilner, M.  
M., in *Rev.  
of Revs.*,  
28 (1903),  
59-67.

Need of  
state con-  
trol of  
commerce.

**139. Rivers and Canals.** — All rivers and canals within a single State are controlled by the State in which they are located. Canal construction has been either supervised or undertaken by the state authorities, as local canals are seldom built unless they are of such importance in state or interstate trade that local officials cannot be permitted to interfere. Navigation on streams or private canals is supervised by the States, although a *minimum amount of state control* has been exercised, the regulations dealing ordinarily with such matters as the licensing of boats, boiler inspection, provisions for the safety of passengers and wharf regulations. Occasionally *rates* are controlled as well, but as these are likely to be lower than on stages or railways that may be brought into competition, very little supervision seems necessary. Comparatively small sums have been expended by state authorities in improving natural waterways.

During the quarter century following the War of 1812, when interest in state enterprises was very great and there were at first no railways, many state canals were built, especially in the region south of the Great Lakes. The most famous and most important of these is the Erie Canal from Buffalo to the Hudson River, a canal which has been widened and deepened many times. Some of these canals never paid a fair interest on the money invested. Others, like the Erie Canal, repaid the original cost and improvements until they were made free. As freight can be carried by water from the head of Lake Superior to New York for one fourth the cost of transportation by rail, this canal at least has had and has now a great influence in reducing freight rates. The project of making *ship* canals of the Erie Canal and others is really a national question (§ 259), too expensive an undertaking for the State, to which only part of the benefit would accrue.

**140. Control of Railways.** — The control of commerce on railways or highways *exclusively within one State*, is a task to be performed solely by that State. According to the Con-

stitution of the United States, Congress may regulate commerce between the States, but it cannot in any way interfere with a State's supervision of state commerce. On account of the multiplication of railways after the Civil War, there arose the need of *state railway commissions* to settle disputes between shippers and railways. As railways are *quasi-public corporations* and have received not only privileges but help in the form of land grants and concessions, it is just that the state governments should demand in return that the railways charge reasonable rates for all distances, and that they do not charge one shipper more than another for similar services.

*State railway commissions*, which seek to protect the shippers and the public, are to be found in more than two thirds of the States. Not all use the same methods for the control of the railways, and it is customary to distinguish *two classes of commissions*. (1) Those of the first class *aim to control the railways by fixing the maximum rates* which may be charged for carrying freight or passengers different distances. In addition, they usually have power to prevent the combinations of railways, which wish to unite for the purpose of preventing competition. (2) Railway commissions of the second class do not have power to fix rates, but devote their energies to investigating the cost and the profits of transportation. When *these railway statistics are published*, if the charges are exorbitant and the profits unusual, public sentiment is relied upon to reduce both to a reasonable amount. Some regulation is certainly essential to prevent the unnecessary and unwise multiplication of railways, to avoid the worst forms of mismanagement, and to keep the great transportation companies from sacrificing the public to their own ends. Yet neither of these classes of commissions seems to have solved satisfactorily the question of properly controlling state commerce. The whole subject of railway control will be considered much more fully later (§§ 259-262).

Two classes  
of railway  
commissions.

Dixon, *State  
Railway  
Control*,  
201-211.

Johnson,  
*Am. Rail-  
way Trans-  
portation*,  
349-366.

Ireton, R. E.,  
in *Rev.  
of Revs.*,  
36 (1907),  
217-220.

## INDUSTRY AND LABOR

The problem of corporation control.

Hoyt, A. M., in *Annals Am. Acad. Pol. Sci.*, 32 (1908), 235-239.

Regulations for corporations.

Ford, *Am. Citizen's Manual*, 67-82.

**141. The Control of Corporations**<sup>1</sup> may be said to constitute, in many States, the great administrative problem of the state governments. The national Constitution does not give the national government the right to control industrial corporations, except so far as they are also engaged in interstate commerce (§ 262). The whole task of controlling ordinary corporations is therefore left to the States. This has proved to be serious, because most of the important corporations of the present day are engaged in business in several States and obtain their charters, *i.e.* take out incorporation papers, in the State which will give them the greatest number of privileges and require the least from them in return. A corporation is allowed, then, to transact business in any part of the Union under its liberal charter, and the other States in which it transacts business find difficulty in protecting the interests of their people, because the privileges possessed by the corporation give it unusual powers. *If the control of one State is more lenient than that of others, large companies will take out their incorporation papers and maintain offices in that State, although most or all of their business may be in other States.* This makes it possible for a corporation to evade a strict incorporation law, and makes it impossible for any State properly to enforce a reasonably severe corporation law, much to the loss not only of the State, but of the entire country.

*Comparatively little control is exercised over corporations* but most of the States now compel every corporation to make an annual report showing the amount of its capital stock, the volume of the business done, the debt of the company, and many other details. Opportunity is ordinarily given for any stockholder to examine the corporation's books at stated periods. Frequently, stockholders of a

<sup>1</sup> A corporation is a set of persons legally associated and empowered to act or to transact business as one person, an artificial person.

corporation are made liable for its debts to the par value of their stock.

**142. Regulation of Savings Corporations.**—Special regulations are provided for those corporations which are devoted especially to the care of the people's savings. These include the *savings banks*, *trust companies*, and *insurance companies*, similar regulations being established for the *commercial state banks*, which receive checking deposits and loan money on short-time notes. Banks are not allowed to take out incorporation papers unless they have a reasonable amount of *paid-up* capital. In most States they cannot buy stocks or speculate in other ways. They are required to keep a certain percentage of all their deposits as a *reserve*, and are permitted to loan money only on certain securities. The savings banks are well restricted in most States, but the laws regarding trust companies have been alarmingly lax. Those for the commercial state banks have been none too strict, although vastly more severe than the laws under which banking was permitted before the Civil War.<sup>1</sup> A plan tried by Oklahoma of government guarantee of bank deposits has been considered by a number of other States.

*Life insurance companies* are a form of savings institutions which the state laws are supposed to regulate carefully. The danger from lenient laws, carelessly administered, was shown by the extravagance, speculation, and corruption brought to light by the insurance investigations in New York and other States in 1905. Most of the States in which large insurance companies have their headquarters have revised their laws carefully since 1906, but constant vigilance is required to insure the protection of savings which have been intrusted to insurance companies or banks.

**143. The Control of Trusts.**—The real problem of controlling corporations, aside from railway companies, lies in the regulation of the great industrial companies called

Savings and commercial banks and trust companies.

Cleveland, *Funds and their Uses*, 209-229, 240-264.

Kilburn, F. D., in *Annals Am. Acad. Pol. Sci.*, 24 (1904), 29-42.

Bolles, *Money, Banking, and Finance*, 231-234, 256-262, 287-294.

Insurance companies.

*New Encyc. of Social Reform*, 632-635.

Cleveland, *Funds and their Uses*, 282-297.

Nature of trusts.

<sup>1</sup> See Dewey, *Financial History of United States*, § 112.

Clark, J. B.,  
in *Century*,  
68 (1904),  
954-959.

*trusts.* Combinations of capital have been found so much more profitable than attempts to do business under competition, that in more than one line of activity a single trust has gained control of almost all of the output of the article which it manufactures. As it has almost a *monopoly*, it can raise prices, discriminate with impunity against individuals or cities, and crush small competitors by the use of unfair means. To protect the people from a trust which charges exorbitant rates, or otherwise controls business for its own interests, is not easy.

Proposed  
methods of  
control.

Hadley,  
A. T., in  
*Atlantic*  
*Mo.*, 79  
(1897),  
383-385.

The different States have attempted to solve this problem in one of three ways. (1) Many States by *declaring trusts illegal* have sought to destroy them. (2) Other States have tried to keep the trusts within bounds by compelling them to *publish complete accounts* of their expenses and earnings. (3) Some of the *States have done nothing*, either from fear that no law against the trusts could be enforced, or because they believed a trust to be a distinct public benefit, since it abolishes the wastes of competition. Judging from our experience in this matter, the attempt to control trusts by very radical legislation is likely to do more harm than good, as harsh laws will injure ordinary corporations and cannot easily be enforced against the more powerful companies. The best methods of control will undoubtedly be found only after years of patient study and experiment.

Labor  
bureaus.

Stimson,  
*Labor in*  
*Relation*  
*to Law*,  
16-39.

**144. The State Labor Laws.** — Most States have laws for the benefit and protection of the laboring classes, since employees cannot easily protect themselves. These are administered by *labor bureaus* or special officers such as *factory inspectors*. Among the laws are those regulating the hours of labor, and others compelling employers to provide for the health and safety of their employees, or making employers liable for injuries received by employees.

Hours of  
labor.

Many of the States limit the number of hours required for a day's labor on public work to eight or ten, and assert that the same number shall be a *legal day's work* for private

parties, but by contract any employee may agree to work any number of hours he chooses. In the case of *minors* and of *women*, however, the laws are more strict, most States prescribing a minimum age limit—usually fourteen, but sometimes twelve—at which children shall be employed in factories, and fixing the maximum hour limit per week for which women and children may be employed.

Very few of the commonwealths where manufacturing is prominent have failed to demand that every company shall do certain things in order to *protect the health and safety of factory employees*. Overcrowding is prohibited, fire escapes are required, and boiler inspection is made obligatory. In those cities where sweat shops are common, statutes seek to prohibit them entirely or reduce their disadvantages as far as possible.

A partially successful crusade has been waged against the use of *child labor in factories or mines*, because of the serious evils which follow the employment of children in these injurious occupations. Many advocate the enactment of a national law forbidding the shipment from one State to another of child-made goods.

While we have not done as much as some of the States of Europe in holding employers responsible for accidents to those in their charge, the law ordinarily requires that every precaution must be taken to prevent accidents to employees whose work entails risk to life or limb. This is especially true of railways; but, as a rule, the provisions for compensation of persons injured in the performance of their duties are very imperfect; and frequently, as in the case of the railway coupling-pin, corporations have refused or neglected to adopt life-saving devices on account of the expense entailed.

**145. Supervision of other Economic Interests.**—Most of the States have endeavored to protect their natural resources to some extent. In very few instances has the *water power* remained in state control, but many States have established *forest reserves*, especially where these will protect the head waters of important streams. Some help

Stimson, *Handbook of Labor Law*, 43-65.  
*New Encyc. of Social Reform*, 170-181, 429-438.

Factory regulation.  
Stimson, *Handbook*, 146-153.

*Encyc. of Social Reform*, 461-464.

Child labor.  
Beveridge, A., in *Annals Am. Acad. Pol. Sci.*, 29 (1907), 115-124.

Liability of employers.

Wright, *Industrial Evolution*, 278-282.

Natural resources.

has been given to the *agricultural interests* through the state departments of agriculture, which have supervision of the pure food laws (§ 121), encourage the development of special products like fruits or sugar beets, and aid farmers' institutes by showing better methods of cultivation.

More has been done to protect game and keep up a stock of fish. Very few kinds of *game* can be shot at any time, for in the majority of the States the close season, when hunting is prohibited, covers most of the year, the time varying for different animals or birds. Many States have also *fish* hatcheries from which the streams are kept supplied with trout and other native fishes. This work is aided by the national fish commission, which has made special effort to develop supplies of cod, salmon, and shad.

Game and  
fish laws.

Peixotto,  
E. D., in  
*Sunset*,  
12 (1903),  
66-71.

Bache, R.,  
in *Outing*,  
47 (1905),  
182-191.

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Dixon, *State Railway Control*.

Jenks, *The Trust Problem*.

Clark, *The Control of Trusts*.

Wright, *Industrial Evolution of the United States*.

Stimson, *Handbook of the Labor Law*.

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1. IMPROVEMENT OF CITY STREETS: Fairlie, *Municipal Administration*, pp. 227-238; Fortune, W., in *Century*, 46 (1893), 894-910; Lewis, N. P., in *Popular Science Monthly*, 56 (1900), 524-539; Peckham, S. F., in *Popular Science Monthly*, 61 (1902), 212-221; symposium in *Annals of American Academy of Political Science*, 29 (1907), 559-600.

2. METHODS OF STATE RAILWAY COMMISSIONS: Hadley, *Railroad Transportation*, pp. 134-145; Dixon, *State Railroad Control*, pp. 201-211; Hendrick, *Railway Control by Commissions*, pp. 92-119; Dixon, F. H., in *Political Science Quarterly*, 20 (1905), 612-624; Hutson, E., in *Reader*, 8 (1906), 245-256.

3. ANTI-TRUST LEGISLATION: Hadley, A. T., in *Scribner's Magazine*, 26 (1899), 604-610; Walker, A. F., in *Forum*, 27 (1899),



257-267; Miller, J. D., in *Arena*, 23 (1900), 617-626; Jenks, J. W., in *Review of Reviews*, 21 (1900), 445-449; and in *Trust Problem*, Chapter XI; Adams, H. C., in *North American Review*, 175 (1902), 895-904; Bryan and Beveridge in *Reader*, 10 (1907), 34-46.

4. CHILD LABOR: Markham, E., in *Cosmopolitan*, 41 (1906), 480-487, 567-574; 42 (1907), 20-28, 327-333, 391-397, 667-673; 43 (1907), 310-314; *Annals of American Academy of Political Science*, 27 (1906), 259-399; 29 (1907), 1-141.

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1. National government as a teacher of road building. Speed, J. G., in *Outlook*, 84 (1906), 209-219.

2. Road building with convict labor. Holmes, J. A., in *Scientific American Supplement*, 55 (1903), 227-247.

3. Five years of railway regulation by the State. Huebner, G. G., in *Annals of American Academy of Political Science*, 32 (1908), 138-156.

4. Remarkable growth of American banks and trust companies. Pratt, S. S., in *Independent*, 59 (1905), 1454-1467.

5. Trust company reserves. Young, G. W., in *North American Review*, 182 (1906), 285-297.

6. A program for labor reform. Low, S., Ely, R. T., *et al.*, in *Century*, 39 (1890), 938-951.

7. The regulation of sweat shops. Kirkland, J., in *Scribner's Magazine*, 12 (1892), 22-25.

8. Peonage in the South. Irvine, A., in *Appleton's Magazine*, 9 (1907), 643-654.

9. Canadian Act to prevent and settle strikes. Eliot, C. W., in *McClure's Magazine*, 30 (1907), 149-156.

10. Protection of fish by the national government. Bache, R., in *Outing*, 47 (1905), 182-191.

### Questions

1. What is meant by the title of a piece of property? by an abstract of title? by a certificate of title? by a deed? by a mortgage? Who keeps records of changes in real estate?

2. Are our rural roads laid out and cared for by district, town, or county officials? Are the roads of this section well located? How are most of them improved?

3. How is a street laid out? What percentage of the cost of improving a street is paid by the abutting property? Do the property

owners pay directly for the sprinkling of the street before their homes?

4. Give the powers of the state railway commission. If there is an anti-trust law in this State, ascertain how it aims to control the trusts.

5. Is child labor used extensively in the State? Is there a child labor law? What is the age limit for work in factories? What progress has been made during the last three years in preventing the employment of children?

## CHAPTER XII

### STATE AND LOCAL FINANCE

#### GENERAL

**146. The Financial Needs of the States and Localities.**—As the greater part of the work done by our towns, cities, and counties consists in the *administration of state law* or in the construction of *local improvements*, a great deal of money is required. Schools cannot be maintained without money for buildings, as well as for the payment of janitors and teachers. Highways and bridges are costly. The great expense of a police force, police courts, and buildings for the imprisonment of criminals show that a high price must be paid for the preservation of order, especially in cities.

The work of *local government* involves great expenditures, especially in cities.

Adams, *Science of Finance*, 96-102.

State, \$185,764,202
County, \$197,365,827
Town and minor, \$222,082,884
City Government, \$551,234,172
National Government, \$617,530,137

EXPENDITURES BY GOVERNMENTS (1902)

When we add to those items the cost of immense sewer systems, a vast network of water pipes supplied by large reservoirs, the cost of street paving and lighting, the expense of a fire department and of a system of city parks, we readily see that the *city governments are particularly expensive*.

Maltbie, M. R., in *Mun. Affairs*, 4 (1900), 685-697.

Expenditure  
of state  
money.

Morey,  
Gov't of  
New York,  
§ 81.

The amount of revenue which the state legislatures are required to obtain for the States is much smaller than that demanded by the localities. As the work of the state governments does not involve costly improvements, nor the maintenance of great military or naval establishments, comparatively little money is needed. In most of the States, the chief *expenditures* are for the payment of public officials, for the care of the insane and other unfortunates, and for the public schools—part of the cost of supporting local schools being frequently borne by the state governments (§ 126).

Investments  
and current  
expenses.

**147. Meeting Financial Needs.**—A part of the expenses of these governments is in the nature of an *investment*, as

Education, \$281,219,278
General Outlay, \$208,475,012
Roads and Parks, \$131,406,404
General Gov't, \$123,761,897
Law and Order, \$122,648,331
Charities, \$81,421,632
Interest, \$78,902,297
Health and Fire, \$74,064,176
Miscellaneous, \$54,548,060

#### STATE AND LOCAL EXPENDITURES (1902) CLASSIFIED

when, for example, a new city hall is erected, or new bridges are built, or state canals are constructed, but most of them must be classed as *current expenses*. Part or all of the cost

of any investment may be met by borrowing money, but the money for the ordinary expenditures must be obtained from the ordinary revenue, the larger part of which is derived from taxation.

In America, the right to *tax and expend money* is a power left to our legislative bodies, the state legislatures, the county boards, and the city councils. *Limitations* are sometimes placed on the amount of money that may be raised in any year, by limiting the maximum tax rate to be levied, or in other ways. Although our legislative bodies always propose *bond issues* for extraordinary expenditures, they are obliged to obtain the consent of the voters before the bonds can be sold, and they are frequently restricted by a limitation of the amount of debt that their government may incur.

**148. Characteristics of a Good Tax.** — There are certain characteristics that every tax should possess. Among these, five are especially important. (1) *It should be according to the citizen's ABILITY to pay.* It is now generally felt that ability should be the test of the amount paid in taxes, because it is a social duty for the individual to contribute to the support of the government in proportion to his means. But there is still a great deal of disagreement over the best way to determine ability, some favoring the net income, others the gross income, and a third set the value of the property a man owns. (2) The times and methods of assessment and collection should not be arbitrary, but fixed and known to all. (3) The tax should be as *little felt* as possible. All of the burden should not be placed upon a single class, as in many of the French taxes just before the great Revolution. An old but defective tax is often less felt than a new, though much better, tax. Changes should, in consequence, take place only when the good to be derived clearly overbalances the difficulty the people encounter in adjusting themselves to the change. (4) It should be *easily administered*. It should not be so hard to assess the tax

Powers of the legislatures in regard to finance.

The tax should be according to ability to pay.

Adams, *Science of Finance*, 328-332.

Plehn, *Public Finance*, 110-122.

Other characteristics.

Bastable, *Public Finance*, 382-391.

that a premium is placed on dishonesty. No tax can be easily administered that does not meet with the support of the people, or of which the cost of collection is great. (5) It should be *suited to the district* for which it is assessed. The absurdity of allowing cities or even States to levy customs duties or internal revenue is clearly apparent, while a general land tax would be about as little suited to the purpose of the central government.

Tax  
systems.

Bastable,  
*Public  
Finance*,  
256-258.

Plehn,  
*Public  
Finance*,  
105-110.

By a *system* of taxes we mean the sum total of all of the taxes levied by any one government. In most countries there are two tax systems:—the national and the local; in this country we have at least three:—the *national*, the *state*, and the *local*. Now, as a matter of fact, no one tax is likely to possess all of the characteristics we have just enumerated. But if no tax is seriously defective, and if the *system as a whole* conforms to these characteristics, the tax system might be said to be good. But in order to be satisfactory, a tax system must do more than that. The systems of the nation, the state, and the localities must not conflict or greatly overlap, while each system must be adapted to the peculiar needs of its government, as shown in the expenditures of that government.

## THE GENERAL PROPERTY TAX

A tax upon  
all real  
estate and  
all personal  
property.

Seligman,  
*Essays in  
Taxation*,  
54-59.

**149. Character. Assessment.**—At least three fourths of all the revenue for the state and local governments comes from the *general property tax*, which is in universal use for the support of our local governments, and is used as the chief resource of the state governments, except in a few manufacturing States. This tax is levied theoretically upon everything that possesses value. It is customary to say that one part of the tax is that assessed upon *real estate*, i.e. lands and houses, while the rest is upon *personal property*, including house furniture, stock of goods in stores, farm implements, horses and cattle, notes, bonds, and other forms of credit.

Statements  
and the  
assessment.

In order to aid the assessors who determine the value of each man's property, every one that owns anything assess-

able is obliged to make out a written inventory of his property, with an estimate of its value. He must swear that this inventory, known as a *statement*, contains a complete and correct list of all his taxable wealth. With these statements in their possession, the assessor and his assistants make up the assessment rolls, showing the total assessable value of property within their district, usually a town or some other subdivision of the county.

Plehn,  
*Public  
Finance*,  
210-217.

Certain classes of property are *exempt* from taxation. In most States churches that are used exclusively for religious services are not taxed. Taxes are not paid upon school buildings or other public property. The list of exempted property often includes more than a tenth of all the property within a town or city.

Exempted  
property.

**150. Difficulties in assessing Property.**—There are certain difficulties inseparable from the assessment of any property. The assessed value of real estate must depend to a great extent upon the assessor's judgment, and, for that reason, it is difficult to secure a perfectly *uniform assessment* even by one man. But as no one person is likely to do all this work within a town, and as it would be absolutely impossible for all of the property within a county to be assessed by a single assessor, the danger that some individuals will be compelled to pay more than their share of the tax is indeed great.

Difficulties  
with real  
estate.

With personal property, much more trouble is experienced than with real estate. A great part of this form of wealth may be concealed easily, so that the assessors are ignorant of its existence. As a rule the *inequalities of assessment of personal property*, and consequently of taxation between man and man, are very marked. In many States little attempt is now made to search out these more "intangible" kinds of property, and the personal property tax law is practically a "dead letter." A large number of States are seeking to reach this form of wealth through other channels, as we shall see (§§ 153-154).

Insur-  
mountable  
difficulties  
with per-  
sonal  
property.

Adams,  
*Finance*,  
436-445.

Qualifica-  
tions of a  
good  
assessor.

It must be perfectly evident that we need capable and upright men as assessors. There are few parts of the government's work that can affect us personally so much as a just or unjust assessment of our property, and to protect ourselves, as well as our neighbors, every care should be taken in the selection of these officials.

Boards of  
equaliza-  
tion.

**151. Equalization and Collection.**—In order to have the assessment of property in the different towns of a county as nearly uniform as possible, *county boards of equalization* have been formed. The principal work of the boards is to decide whether the assessors of any town have been too lax or too strict. If they find that any set of assessors has assessed their town too low, the assessment is raised to correspond with the others. The assessments from the counties are treated in the same way by the *state board of equalization*, which considers evidence to determine whether the assessment throughout the State is uniform, and, if it is not, to make it as nearly so as possible. The chief difficulty that the boards of equalization encounter is the *undervaluation of property* within an entire county, in order to reduce the state tax of that county to a minimum amount. In one State this process of undervaluation was carried so far that at one time no county's property was assessed at even one fifth of its value. The attempt to equalize assessments is, at the best, but partially successful.

Adams,  
*Finance*,  
445-449.

The tax  
rate.

When the boards of equalization have completed their tasks, the *tax rate* for the coming year can be ascertained easily. The amount of money needed to run the city, county, or state government has already been established by the legislative body in its total appropriations. When this sum has been divided by the total assessed value of property within the city or county, the rate of tax upon every dollar's worth of property is known. All taxes not paid<sup>1</sup> before a certain day become *delinquent*, and a penalty of from one to ten per cent, besides interest at a high rate, is added to the amount of the taxes. If still unpaid, the government for which the tax was assessed allows any one who will pay the tax to collect the amount, giving him what is virtually a first mortgage upon the property at a high rate of interest. Because of these rigid regulations, the prompt payment of taxes is customary.

**152. Observations on the General Property Tax**—The extent to which the general property tax is used must be

<sup>1</sup> State taxes are never paid directly to state officials, but to county, or in New England to town officials.



taken as an indication of its value. Indeed, the tax is *quite satisfactory in agricultural communities* that have no large cities, and none of whose people are especially wealthy in other things than houses and lands. Unfortunately few of our States can be said to be of this class, for with the very great development of commerce and industry during the last two or three decades, the inequalities of wealth have become more striking. Our city population has meanwhile increased from one fifth to one third of the whole population. The present outlook is that the *general property tax will be used much less by the state governments* than formerly, although it is likely to be the financial mainstay of the *localities* for a long time to come.

The tax in agricultural communities.

The tax in industrial communities.

The principal objections to the general property tax may be stated as follows:—

Objections to the tax.

(1) It is practically impossible to discover and assess “intangible” property through this tax, and the tax is, therefore, in reality a real estate tax, although theoretically a tax on *general property*.

Bullock, *Economics*.

(2) As a result of this failure, the farmer and the poor man pay more than their proportional share of the tax, and very much more than their wealthier neighbors in proportion to their *ability*.

(3) Because of the difficulties of assessing it over a large area, it is not a good *state* tax.

If we compare these defects with the characteristics noted in § 148, we shall see why the general property tax is so unjust and unsatisfactory.

## OTHER FORMS OF REVENUE

**153. Corporation Taxes.**—Because the general property tax has failed to reach personal property, and may be unsatisfactory for state purposes even when it is administered properly, many of the industrial States have abandoned it entirely or chiefly as a state tax. Most of these strive to reach the “intangible” forms of personal wealth

Reasons for and forms of corporation taxes.

Bullock  
(ed.), *Read-  
ings in Pub.  
Finance*,  
350-356.

Seligman,  
*Essays in  
Taxation*,  
166-176.

Special  
corporation  
taxes.

Diversity in  
corporation  
taxation.

Adams,  
*Finance*,  
449-464.

Seligman,  
*Taxation*,  
166, 176-179.

by means of corporation taxes. Two States have *general corporation taxes* levied on all corporations doing business within their limits, but most of the States that are trying this form of taxation do not attempt to tax the ordinary corporation, for the ordinary corporation is little different from the individual whose property and stock in trade are reached under the general property tax. They levy their taxes principally on the great corporations which do so much business and have so little competition that *they are almost monopolies*, or else upon those *public service corporations upon whom special privileges have been conferred by the people*. Both classes of these great corporations have escaped a large share of taxation in the past.

Some States try to tax banks by making them pay a certain per cent of their stock. Insurance companies are taxed on the total amount of the premiums they receive each year. Large manufacturing corporations are often obliged to contribute a part of their *net income*, but more frequently the tax is assessed upon their capital stock. Railways, both within and outside of cities, express companies, telegraph and telephone companies, are often taxed separately. Sometimes these companies are assessed according to the value of their *franchises*, which is usually represented by the market value of their stock.

**154. Questions regarding Corporation Taxation.**—There is little uniformity in the methods used by the different States in their attempts to reach corporate wealth, a great contrast being presented in that respect to the general property tax, which is alike in most of the commonwealths. Not only do the States vary greatly in their views regarding the *corporations* to be taxed, as noted in the preceding section, but they have adopted at least a dozen different practices, when they decide whether the tax shall be levied on the *franchise*, the *stock*, or some form of the *earnings*.<sup>1</sup>

<sup>1</sup>Many think that corporations should pay taxes according to the par value of their stock; others assess the market value of the stock. Some

Corporation taxes will undoubtedly be used more each decade, although they may not be adopted extensively on account of problems in administration. Since our business life is not simple as it once was, our present systems of taxation in most of the States are unjust and cannot be adapted to our present-day industrial conditions. Most European countries have tried and found fairly successful some forms of corporation taxes, and the Eastern States that have depended chiefly on corporation taxes find them superior for purposes of state revenue, and more just to the poorer classes than the taxes which they replaced. It has been found possible to avoid the two great dangers of industrial taxation. (1) The chief *objection* to levying taxes on industry is that industry may be injured by the extra burden imposed. In practice it is found that to-day *industry* can afford to pay taxes better than *agriculture* or *labor*. (2) Under our present system of federal government, the States must avoid severe laws against corporations (§141) or these will transfer their business in some cases to other States. This danger has not been realized in the attempts to tax corporations.

Reasons for increasing use of corporation taxes.

**155. Inheritance Taxes.**—Another favorite device of the newer systems of state taxation is the tax upon inheritances. This is based upon the principle that the State has a real claim upon the property of any one who has amassed wealth under the protection of its laws, if this property is transferred without cost to another who did not aid in its accu-

Principle of the tax.

*New Encyc. of Social Reform*, 621-623.

believe that the *amount* of business transacted should be used; others approve the *gross earnings* as the best form for assessment. In some cases, the *dividends* paid are used as the basis of assessments, and in still others the *net earnings* of the corporations are used. Frequently the tax is levied upon the *franchise*, which is supposed to represent the real amount of a corporation's business, but the term is very indefinite, for different States determine the value of the franchises in turn by considering one or all of the bases just mentioned. Most students of the subject agree that the net earnings represent best the capacity of corporations to pay taxes, but our governments have made little use of that base in assessing taxes, because it is more difficult to determine net earnings than most of the other bases that have been considered.

Huebner, S.  
in *Quar. Jl.*  
*Econ.*,  
18 (1904),  
529-550.

mulation. It is held that legatees who acquire wealth which they have not earned are able to pay a fair percentage of money bequeathed to them in the form of a tax. *Inheritance taxes* are used in most foreign countries and in about one half of the States.

Progressive  
nature of  
the rates.

*New Encyc.*  
*of Social*  
*Reform*,  
623-624.

Few, if any, of the States require a tax to be paid upon small bequests to a wife, a husband, or a child. But if the bequest is large, or the legatee not closely related to the deceased, a large percentage of the property left must be paid into the state treasury. In other words, the tax is often *progressive*, i.e. the rate increases with the amount of the bequest or the lack of relationship between the deceased and the legatee. This conforms with the tests that persons should pay taxes according to their ability and to the democratic demand that the State has a claim on bequests, but the smallest claim in the case of members of the immediate family.

Bullock,  
(ed.), *Read-*  
*ings in Pub.*  
*Finance*,  
373-393.

Liquor  
licenses.

Plehn,  
*Public*  
*Finance*,  
259-265.

Bullock  
(ed.), *Read-*  
*ings in Pub.*  
*Finance*,  
337-349.

**156. Local Revenue from Business.**—A form of revenue of some importance is the system of *licenses* used sometimes by the States, but much more commonly by the localities. The most profitable licenses, from the standpoint of governmental revenues, are those granted to *liquor saloons*. As a rule, fortunately, the question of high or low license has been considered not for its bearing upon the revenue of a community, but upon the public welfare (§ 134). As would naturally be expected, the income from this source is greater under high than under low license. Licenses are usually made obligatory for many *other kinds of business*, such as selling drugs and maintaining theaters, and sometimes for the ordinary professions and occupations. A great many licenses, however, are granted for little more than the cost of drawing the necessary papers, so that these really do not become a source of profit to the government.

Business  
income.

Especially in cities, a part of the revenue is derived from *business enterprises conducted by the government*. Since many cities own their system of waterworks, the charges collected

from the patrons add to the municipal income. When other public utilities, as electric lighting, are managed by the cities, the municipal revenue is still further augmented. The net profit obtained from these sources is, however, likely to be small, as the business is usually conducted with a view of doing as much as possible for the citizens, rather than of making money (§ 79).

The sale of *franchises for public utilities* (§ 78) is even now a help in paying a city's expenses, for in many cities not only is a sum paid for the franchise, but a percentage of the gross receipts from the business must be paid into the city treasury. The gift to corporations of franchises of enormous values by corrupt, ignorant, careless, or shortsighted city councils constitutes one of the most inexcusable defects in the history of our city governments.

**157. Miscellaneous Ordinary Revenue.**—In several States, all voters are obliged to pay *poll taxes*. The amount of the

Bullock (ed.), *Readings in Pub Finance*, 108-116.

Increasing revenue from franchises.

*Municipal Program.*

Poll taxes.

General Property Tax, \$706,660,244	
Miscellaneous, \$171,692,964	
Licenses, \$100,- 074,778	
Indus- trial Inc'me <sup>1</sup>	
Corpo- ration Taxes <sup>2</sup>	

#### STATE AND LOCAL REVENUE (1902)

tax is the same for every person subject to it, irrespective of his ability to pay taxes, and the tax is accordingly an

Bullock, (ed.), *Readings in Pub Finance*, 193-201.

<sup>1</sup> \$66,813,856.

<sup>2</sup> \$62,327,400.

unjust one to the laboring classes. In a few of these States, no elector may vote unless he has paid his poll tax for the preceding year.

Special assessments. The cost of local improvements is usually met, in part at least, by *special assessments* upon the property most benefited. In grading and paving a street, for example, the owners of the real estate on both sides of the street will be asked to pay for the improvement in proportion to the amount of their property.

Summary. An examination of the scheme of taxation in use in the States, cities, and counties show that most of the tax *systems* in use (§ 148) are not well adapted to the social and business needs of the people. This is due chiefly to the great dependence placed upon the general property tax. The exceptions are those rural communities in which almost all property is visible, the States which, by separating state from local taxation, have established satisfactory corporation taxes, and the cities which depend upon real estate, profits from public utilities, and licenses upon local business.

Why it is necessary to borrow money.

Adams, *Finance*, 526-533.

The sale of bonds.

Plehn, *Public Finance*, 311-324.

**158. Borrowing Money.** — It is hardly possible that any government will borrow money to meet *current expenses*. But when a city builds a number of schoolhouses, or a county erects a new courthouse, it seems unjust to lay the whole burden of these undertakings upon the taxpayers during the year or two in which the work is being done. As authority to borrow money is ordinarily given to the different governments by the state constitution, it is usual to issue bonds at four or five per cent interest to the amount needed for the work. These *bonds are sold publicly to the highest bidders*, the government proceeding to collect in taxes yearly enough to pay the interest upon the bonds, and to set aside one twentieth, one thirtieth, or one fortieth of their face value, which goes into a fund for the redemption of the bonds at the end of twenty, thirty, or forty years, or is used to redeem part of the bonds each year.

About the middle of the last century, some of our state

and city governments were so anxious to invest public money in private enterprises and to expend large sums upon public improvements, that they incurred immense debts. To prevent the recurrence of this extravagance, *the state constitutions have placed a limit on the amount of debt that any of its local governments may incur*, and in many cases on the amount that state governments may contract. They have also prohibited the expenditure of money as subsidies to individuals or corporations. Very few cities in the country are allowed to borrow amounts that exceed five per cent of the assessed valuation of property within their boundaries, except for investments in public utilities.

The debt limits for city, county, and state governments.

Wilcox, *City Government*, 89-91.

In a large and constantly increasing number of cities, the councils are not allowed to borrow more than a small sum of money, unless they have first asked and obtained the *approval of the voters* at the polls.

The referendum for finance in cities.

### General References

- Bryce, *The American Commonwealth*, pp. 356-365.  
 Bullock, *Principles of Economics*, pp. 539-550, 559-587.  
 Plehn, *Introduction to Public Finance*.  
 Adams, *Science of Finance*, pp. 434-466.  
 Ely, *Taxation in American States and Cities*, pp. 131-201.  
 Fairlie, *Municipal Administration*, pp. 317-371.  
 Bullock (ed.), *Selected Readings in Public Finance*, pp. 193-253, 337-395.  
 United States Twelfth Census, bulletin on *Wealth, Debt, and Taxation*.

### Topic

THE DEFECTS OF THE GENERAL PROPERTY TAX: Adams, *Science of Finance*, pp. 434-449; Seligman, *Essays in Taxation*, pp. 23-37; Ely, *Taxation in American States and Cities*, pp. 146-201; Bullock, (ed.), *Readings in Public Finance*, pp. 202-253.

### Studies

1. Some taxation problems and reforms. Commons, J. R., in *Review of Reviews*, 27 (1903), 202-208.
2. The new mortgage tax in New York. Seligman, E. R. A., in *Review of Reviews*, 32 (1905), 85-88.

3. Taxation in American cities. *Annals of American Academy of Political Science*, 28 (1906), 155-172.

4. The extensive use of the referendum in local finance. Oberholtzer, *The Referendum in America*, pp. 241-285.

5. Conditions and needs of local taxation. Seligman, E. R. A., in *Political Science Quarterly*, 22 (1907), pp. 297-314.

6. Suggestions for a revenue system. Adams, *Science of Finance*, pp. 500-517.

### Questions

1. Compare the assessment of real estate with that of personal property in this city or county. What property is exempt from taxation?

2. Look up for the city and county the total assessed valuation of property, the tax rate, the income from the general property tax, the income from other important sources.

3. For what three things was the most money expended last year by the county? by the city?

4. What is the amount of the city debt? Is there a limit to the amount of debt that may be incurred?

5. How does the total amount of municipal indebtedness in the United States compare with the national debt (Report of Twelfth Census)? Is the value of our municipal buildings and public works greater than the total amount of the city debt?

6. For what purpose does the state government expend the most money? What part of its revenue is derived from corporation taxes? What is the amount of the state debt?



## CHAPTER XIII

### THE SPHERE OF STATE ACTIVITY

**159. The Powers denied to the States.**—As we noticed in the first chapter (§ 11), our federal system of government is so constituted that certain duties are intrusted by the people to the national government, while all the other functions of government are left with the States, to be exercised by them through either their state or their local governments. The United States Constitution enumerates the *powers granted to the national government*, such as the right to levy taxes, declare war and make peace, provide an army and a navy, arrange treaties, regulate foreign and interstate commerce, coin money, and govern national territory; and the same Constitution mentions which of these powers and what others are especially forbidden to the States.

Powers indirectly denied to the States.

U. S. Constitution, Art. I, § 8.

No State can engage in war or raise an army unless actually invaded, nor collect duties upon imported goods except for the national treasury, nor make any treaty. The States may not coin money, issue paper money, "make anything but gold or silver a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility." Furthermore, no State may establish a system of slavery, "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." No State is allowed to abridge the right of citizens of the

Powers expressly denied to the States.

U. S. Constitution, Art. I, § 10, Amendments XIII, XIV, XV.

United States to vote on account of race, color, or previous condition of servitude.

Powers  
left to the  
States.

Unless, however, a power is granted to the United States government exclusively, or denied to the States in explicit language, it may be exercised by any State as it sees fit. This very broad sphere of state activity we shall consider under the three following heads: (1) the constitutions under which these powers are actively exercised; (2) the uniformity and diversity in legislation and administration among the different States on the subjects left to their control; and (3) a summary of the classes of duties performed by the States.

### THE STATE CONSTITUTIONS

Relation to  
the law of  
the State.

**160. The Character of a State Constitution.**—A state constitution is the *fundamental law* which the people of the State have arranged for their government and protection. Unless they have overstepped the limit of the sphere of activity left to the State by the people of the whole United States, *their constitution can be modified only by themselves*. This is but another way of saying that within that sphere of activity which we have been considering in Chapters VIII to XI, and which is summarized in §§ 167–171, the people of each State have the right to complete self-government. But *if any article of a state constitution is contrary to the Constitution of the United States, it must be revised*, because the national “Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.” For the same reason, the constitution of a State might be amended by the adoption of an amendment to the national Constitution which the

Relation to  
the Consti-  
tution of  
the United  
States.

U. S. Con-  
stitution,  
Art. VI.  
cl. 2.

State did not ratify. For instance, if an amendment were adopted conferring upon Congress the power to make a national suffrage law stating who might vote for all officials to be elected within the United States, the congressional law authorized by this amendment would supersede all the articles in the state constitutions on that subject.

Bryce, *Am. Commonwealth*, abr. ed., 291-296.

On the other hand, a law made by the state legislature which conflicts with the state constitution will be set aside by the courts as *unconstitutional* and void. The state constitutions can therefore be changed only by the people of the States, acting directly and through special representatives, except upon those rare occasions when an amendment to the United States Constitution affects that of the State.

Ways of changing a constitution.

**161. Formation of a State Constitution.**—Several of the States have constitutional conventions at regular intervals to revise the existing constitutions;<sup>1</sup> but most of them give the legislatures the right to decide when a new convention shall be called.<sup>2</sup> The first step is taken when the legislature passes a resolution asking the voters to signify at the next regular election whether they wish a new constitutional convention. Such a resolution is not usually passed by an ordinary vote, as nearly one half of the States demand that two thirds of the members elected to each house of the legislature shall approve the resolution before the people vote upon the question. If, at the next election, a majority of the voters favor the convention, the legislature arranges for the election of delegates in districts throughout the

Calling a constitutional convention.

<sup>1</sup> Six state constitutions require periodical votes upon whether conventions shall be called or not. The interval in New Hampshire is seven years; in Iowa, ten; in Michigan, sixteen; and in New York, Maryland, and Ohio it is twenty years.

<sup>2</sup> Fifteen of the States have had but one constitution each, seven of these, however, being the new States admitted since 1888. Only three States—Massachusetts (1780), New Hampshire (1792), and Vermont (1793)—have eighteenth century constitutions. South Carolina and Georgia have had the largest number of constitutions, each having tried six besides those adopted during the period of the Civil War.

Oklahoma permits the voters by use of the "initiative" to propose a convention for revision of the state constitution.

State, and designates a time and a place for the convention to hold its sessions. The meeting of a convention is an important event, and the delegates are usually selected with great care.

Adoption  
of a consti-  
tution.

When its organization has been completed, the convention may decide merely to revise the present state constitution, but frequently the changes are both numerous and radical. After completing its work, it may declare by resolution that the new constitution goes into force the first of the year following, except in about one quarter of the States, the constitutions of which make it obligatory for the conventions to *submit the new constitutions to the voters* for their approval or disapproval. As a rule, however, the conventions voluntarily do this, since it has become an unwritten law in most parts of the Union that popular ratification shall be the last step in the process of framing a state constitution.<sup>1</sup> Then, if the new constitution is not approved, the old one remains in force.

The first  
method.

Ober-  
holtzer,  
*Referen-  
dum*,  
150-154.

**162. Amendment of the Constitution.** — As the state constitutions are usually quite long and complex, changes are constantly being made through the adoption of separate amendments. There are *two rather different methods of amendment*. (1) The proposed amendment is accepted by a fairly large majority in each house of one legislature, and is then left for the legislature chosen at the next election. If the amendment is approved by this *second legislature*, a vote is taken upon it at the following state election, and if indorsed by a majority of those voting, it becomes a part of the constitution. (2) Many of the newer States, for the purpose of avoiding the serious delays which are inevitable with the first method, give *two thirds* of those elected to each legislative house the right to propose amendments, which

The  
second  
method.

<sup>1</sup> Since 1838, only five States have adopted constitutions, without popular ratification, excluding those framed in the South between 1861 and 1865. These States were Mississippi, 1890; South Carolina, 1895; Delaware, 1897; Louisiana, 1898; and Virginia, 1902.

must be *ratified at the polls as by the first method*. In order that all amendments may stand upon their own merits, they are submitted separately. Some States are so fearful of frequent changes that they limit the number of amendments that may be proposed at one time, or within a certain number of years. In spite of these precautions, many people think that too many changes occur in the constitutions, and all know that very few of the amendments awaken the popular interest and receive the attention that they should.

**163. The Contents of the State Constitutions.**—The subdivisions of our constitutions are four in number. (1) There are the *Bills of Rights* which state some general principles of liberty and government, specifying the individual rights that shall not be disturbed by the state or local governments, or by any public official. (2) The principal parts of the constitutions are the *frames of government*, including the sections devoted to the composition and powers of the legislative, executive, and judicial branches of the state government. (3) We have the *miscellaneous constitutional provisions*, the chief of which are the articles upon suffrage, the method of amendment and general revision of the constitution, and upon local government. (4) In addition to these constitutional provisions there are other *supplementary provisions* on education, corporations, taxation, public lands, and public institutions. Most of the paragraphs in the articles last mentioned, and many of those in other parts of the constitution, do not deal with really constitutional laws, or *fundamental laws*. They are, in truth, only important *statutes*, supplementary to the constitutional laws, which are placed in the constitutions in order that the people may vote upon them, and that they may not be altered by the legislatures.

The main differences between the older constitutions and those of recent date is that the later constitutions contain a larger number of these statutes than is the case with the earlier constitutions. The charge has consequently been

Cleveland,  
*Growth of  
Democracy*,  
120-127.

Constitu-  
tional  
provisions.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
306-316.

Statutory  
provisions.

The consti-  
tutions as  
codes.

Bryce, *Am. Commonwealth*,  
abr. ed.,  
317-323.

made that the *newer constitutions are becoming more like codes*, or summaries of statutes, which must, of course, be revised much more frequently than would be necessary for true constitutions.

## UNIFORMITY AND DIVERSITY IN STATE LAWS

Increase of  
interstate  
travel and  
business.

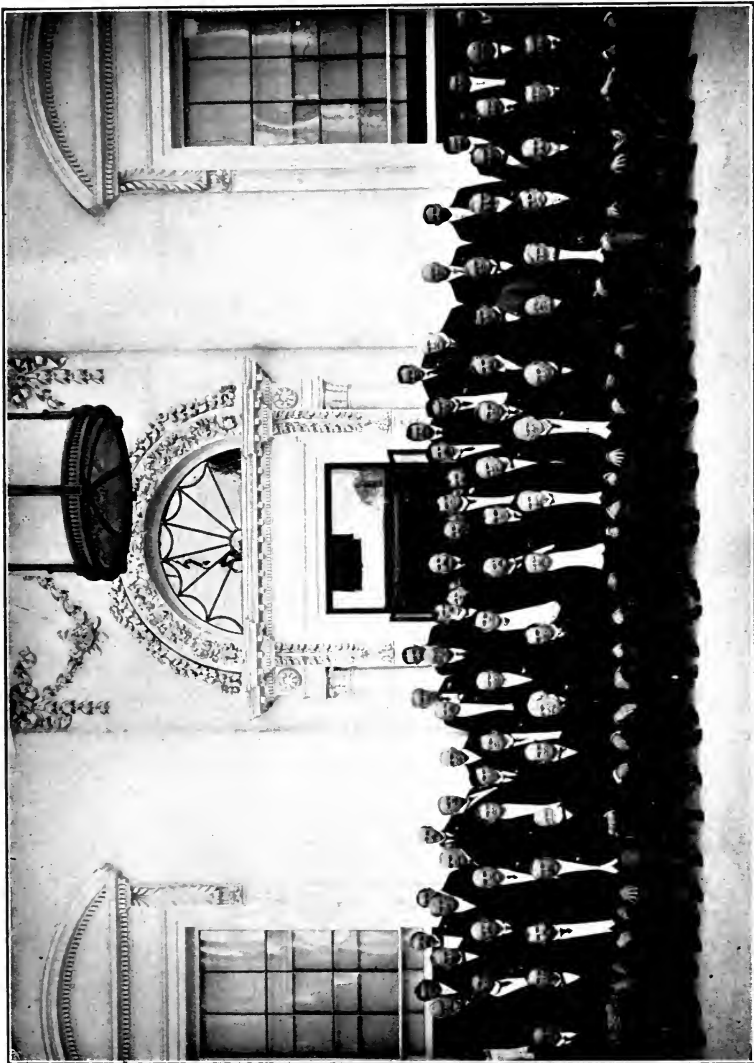
### 164. The Increasing Need of Uniformity in State Laws. —

Since the States have the power to make such laws as they please in relation to the subjects we have considered in previous chapters, it is quite interesting to know whether the laws of the various States are very much alike. If the States have a dozen different kinds of laws regulating the making and enforcement of contracts, persons in different States cannot do business with one another. Nowadays we feel that these laws not only should be, but must be, more or less similar, for no State is willing to depend upon its own people for all that it needs. We believe that *state boundaries ought not to be division lines between radically different systems of law*. Interstate trade or interstate travel is no longer a thing of rare occasion, but an everyday affair, and the need of uniformity in all of the great principles of state law is becoming constantly greater.

Conferences  
to secure  
uniform  
action.

*Outlook*,  
89 (1908),  
144-148.

In some cases where the national Constitution has left a subject to state direction and concerted action was necessary, *conferences* have been called by the governors in order to agree upon desirable legislation or improved uniform methods of administration. The Annapolis conference (1786), which led to the constitutional convention in Philadelphia, was of this character. Many *anti-trust conferences* have been held by central Western States, and some Western commonwealths have participated in *irrigation conferences*. The most notable gathering of all was held at Washington in 1908. The governors from forty of the States met in a conference called for the purpose of discussing the need of *concerted action in the preservation of natural resources*—



From stereograph, copyright, 1908, by Underwood and Underwood, New York.

See page 170

# FIRST WHITE HOUSE CONFERENCE OF GOVERNORS (1908) AND OTHER PUBLIC MEN





water, forests, minerals, and lands. One important object of the meeting was the creation of an Appalachian forest reserve under national control from lands owned or supervised by the different States of the Atlantic border.

**165. Variations in State Laws on Important Subjects** are quite numerous, and often objectionable. An illustration of the disadvantages due to a lack of uniform legislation is furnished in connection with *corporations*. We noticed in § 141 the very great difficulty in making and enforcing adequate corporation laws under our present system. The laws which define *crimes* and provide penalties for criminals vary to some extent. In one State an offense may be merely a misdemeanor, punishable by imprisonment for a short time, while, in an adjoining one, it may be considered a felony, conviction for which means from ten to twenty years of hard labor. Differences of this nature are not only unjust, but lead to a greater amount of lawlessness than would be the case under uniform laws.

Corporation  
and crim-  
inal laws.

Divorce laws are very dissimilar in some of the States. South Carolina does not permit her courts to grant divorces for any reason whatever, and the laws in a few of the other States are very strict. In most sections, on the contrary, *divorces are granted upon slight pretexts*. For many years the more conservative States were unable properly to enforce their divorce laws, because their citizens, by temporary residence where the laws were lax, could easily obtain divorces. This practice was at one time so common that the courts became more lenient everywhere, but it has been discontinued, as the United States Supreme Court has declared such divorces illegal, unless they are granted to *bona fide* residents of the State and unless the party from whom the divorce is given receives notice of the action.

Divorce  
laws.

**166. The Degree of Uniformity in State Laws** is much more marked than the diversity, because the *differences are ordinarily in details*, while the **GENERAL PRINCIPLES of state law are everywhere much the same**. As President Woodrow

Uniformity  
in essen-  
tials.  
Variety in  
details.

Hart, *Actual Gov't*, § 53.

Wilson says: "We feel the conflicts because we suffer under their vexations; while we fail to realize and appreciate the uniformities, because they are normal, and have come to seem matters of course."<sup>1</sup>

"All the States have built up their law upon the ancient and common foundation of the Common Law of England, the new States borrowing their legislation in great part from the old. Nothing could afford clearer evidence of this than the freedom with which, in the courts of nearly every State in the Union, the decisions of the courts of the other States, and even the decisions of the English courts, are cited as suggestive or illustrative, sometimes also as authoritative, precedent. Everywhere, for instance, the laws of property rest upon the same bases of legal principle, and everywhere those laws have been similarly freed from the burdens and inequalities of the older system from which they have been derived. Everywhere there is the same facility of transfer, the same virtual abolition of all the feudal characteristics of tenure, the same separation between the property interests of man and wife, the same general rules as to liens and other claims on property, the same principles of tenancy, of disposition by will, of interstate inheritance, and of dower. Everywhere, too, contracts, common carriage, sales, negotiable paper, partnership, rest upon similar principles of practically universal recognition."<sup>1</sup>

Interstate comity.

U. S. Constitution, Art. IV, § 1.

Hart, *Actual Gov't*, § 56.

*The United States Constitution has aided in the development of a uniform system of state law throughout the country.* It prescribes that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." Decisions of courts in one State are often cited and followed in another. If a person dies in Colorado, owning property in that State and in New York, his will, if approved by the Colorado courts, will also be accepted by that of New York. Such an action would be improbable without this clause of the Constitution, which has made uniform laws on many subjects almost indispensable.

<sup>1</sup> Wilson, *The State*, § 1114.

## CLASSES OF DUTIES PERFORMED BY THE STATES

**167. Provisions relating to State and Local Government. — General.**

It is difficult to realize how very wide is the field of activity left to the States; that is, to the people of the States, for the "State" is not synonymous with state government. This may be made easier by considering briefly a summary of *five important classes of duties performed by the States*: (1) the regulation of state and local government, (2) the protection of individual rights from government officials, (3) the making of ordinary law, (4) the administration of justice, (5) all of the numerous administrative duties performed by our governments for the benefit of the people.

First of all, *the States absolutely control the governments* that shall carry on the State's work, subject to the limitation of the United States Constitution, that the governments shall be republican in character. The people of the States can, therefore, in making their state constitutions, create such governments, central, county, and city, as they desire, and use such sources of revenue as they please for the support of these governments, provided they do not interfere with the system of taxes left to the national government *exclusively*. They can place restrictions, if they please, upon the powers of the state legislatures, and they can limit or extend the powers of the city and county governments, making them wholly subject to the legislatures or largely independent of them. In practice, the restrictions placed upon the legislatures, although numerous, do not greatly hamper those bodies, and the local governments, as we have seen, are allowed by law and custom to exercise much the same functions in all parts of the United States.

Freedom in arranging structure and powers of governments

U. S. Constitution, Art. IV, § 4.

The people of the States also *decide who may take part in the work of governing by voting*, provided that the right of citizens to vote is not denied or abridged on account of race, color, or previous condition of servitude.

and qualifications of electors.

—Set of  
rights pro-  
tected by  
the States.

**168. The Protection of Individual Rights** from government officials is left almost exclusively to the States, for the work of the national government does not bring it into close contact with our daily life except for the postal service. In consequence, it is a matter of considerable interest that every State in the Union provides in its constitution that the *state and local governments shall not deny us certain rights*. Among these are the right to perfect religious liberty, to speak and write without governmental interference, to have our homes free from search, except when we are accused of crime; and for every accused person to be tried without delay before a jury of his peers and to be exempt from unusual fines or punishment.

The laws  
defining  
personal  
relations.

**169. The Making of Ordinary Law.**—The States have practically entire charge of making the laws dealing with our *personal relations* with one another, and the laws under which almost all of our business is done. The *legal relations* of husband to wife, of a parent to a child, of an employer to an employee, of a principal to an agent, are determined by the States and not by the national government. For example, all our *marriage* and *divorce* laws, the laws relating to *labor*, the laws dealing with *contracts* which one person makes with another, are state laws. *Our right to hold real or personal property, to buy or sell anything, or to inherit a bequest is exercised under state laws.*

Corporation  
laws.

The States create *corporations*, giving them the right to do business as artificial persons, so that practically all manufacturing corporations, transportation companies which do business exclusively within one State, insurance companies, loan, trust, and banking corporations, are created in accordance with the provisions of state laws, and are subject to state and not national supervision.

Need of  
courts.

**170. The Administration of Justice.**—*The enumeration of individual rights in the constitutions, and the making of the laws just mentioned, necessarily involve some means for protecting those individuals whose rights under the constitutions or*

*laws have been infringed by others.* For this purpose a system of courts is created to which the injured party may apply for a redress of his grievance. The greatest care is taken by the States in arranging the procedure of the courts and the methods for trying these *civil suits*, as they are called (§ 106), in order that the innocent and the defenseless may not suffer at the hands of the powerful and the unscrupulous. Civil suits.

But the administration of justice by the States is by no means confined to civil suits, for a great part of the work of the courts is in connection with *criminal cases* (§ 107). As comparatively few crimes are committed in violation of national laws, practically all criminals are tried by state courts and punished in state institutions for breaking the laws passed by the state legislatures for the protection of the life and property of the citizens. Criminal cases.

No case tried in a state court can be appealed to a national court unless it involves national law.<sup>1</sup> As comparatively few cases do, the administration of justice in those matters that concern us most closely is a phase of state activity. State and national courts.

**171. Administrative Functions performed by the States.** — These duties we have been considering could not well be neglected by the States, since they were not granted to the national government, and since they touch the foundation of our business and social life. Many others are performed by the state or local governments which are now considered essential to our welfare. The magnificent system of public *education* is a phase of state activity, resting upon a state school law, which is administered by the localities. The state and local boards of *health*, which enforce quarantine laws, prevent the spread of diseases, and aid the local governments in their task of providing more perfect sanitary arrangements, are doing a work that benefits every one of Variety and importance of duties.

<sup>1</sup> The expression "national law" is used here and in some other cases in a very broad sense, including the United States Constitution, the treaties, and the laws made by Congress.

us. *Public improvements*, like state canals or roads, bridges, public buildings, and systems of waterworks, whether constructed by the state or local governments, are parts of the State's work. The elaborate arrangements found in every State for the care of the poor, the insane, and the blind show that *the States are doing their duty toward the needy and the unfortunate*. All of these functions are becoming more important year by year, and are typical of the work which the States are now undertaking along other lines for the public benefit.

### General References

- Bryce, *The American Commonwealth*, abridged ed., pp. 287-328.  
 Oberholtzer, *The Referendum in America*, pp. 99-172.  
 Cleveland, *Growth of Democracy*, pp. 109-127.  
 Hitchcock, *American State Constitutions*.  
 Cooley, *Constitution Limitations*, pp. 32-101.  
 Jameson, *Constitutional Conventions*.  
 Dealey, J. Q., in *Annals of American Academy of Political Science*, 29 (Mar. Sup., 1907), 1-98.

### Topics

1. THE EVOLUTION OF THE STATE CONSTITUTION: Bryce, *The American Commonwealth*, abridged ed., pp. 297-305, 317-319; Cleveland, *Growth of Democracy*, pp. 109-113; Oberholtzer, *Referendum in America*, pp. 99-127; Hitchcock, *American State Constitutions*.
2. THE QUESTION OF UNIFORM DIVORCE LAWS: Wright, *Practical Sociology*, pp. 159-176; Stewart, G. A., in *Popular Science Monthly*, 13 (1883), 224-237; Phelps, E. J., in *Forum*, 8 (1889), 349-364; Stanton, E. C., in *North American Review*, 170 (1900), 405-409, *Independent*, 54 (1902), 2150-2152; Larremore, W., in *North American Review*, 183 (1906), 70-81; Huffcut, E. W., in *Independent*, 61, (1906) 1265-6; Richmond, F. H., in *Eclectic Magazine*, 148 (1907), 371-377.

### Study

1. Are changes in the state constitutions too frequent? See Ashley, *American Federal State*, § 414, with marginal reference.

### Questions

1. When was our state constitution adopted? What was the ratifying vote? How many constitutions have we had in all? Have any proposed constitutions ever been rejected?

2. How may our constitution be amended? How many amendments have been adopted for the present constitution? To what do they refer? Were any submitted to the voters at the last election? If so, were they adopted or rejected?

3. Make a list of the important statutes in the constitution.

4. Is the bill of rights in our constitution long or short? What provisions of the United States Constitution are copied?

5. Give the provisions regarding religious freedom, freedom of speech, and right in trials. Name any important rights given in the constitution, but not mentioned in this chapter.

## PRESIDENT, VICE PRESIDENT, THE GOVERNORS, AND GUESTS

Probably the most notable group of United States Statesmen ever photographed

*First row, seated, left to right*

Senator Newlands  
 Governor Harris of Ohio  
 Governor Hughes of New York  
 Governor Davidson of Wisconsin  
 Andrew Carnegie  
 William J. Bryan  
 James J. Hill  
 John Mitchell  
 President Roosevelt  
 Vice President Fairbanks  
 Mr. Justice Harland  
 Mr. Justice Brewer  
 Mr. Justice White  
 Mr. Justice McKenna  
 Mr. Justice Holmes  
 Mr. Justice Day  
 Mr. Justice Moody  
 Secretary Cortelyou  
 Secretary Bonaparte  
 Secretary Garfield

*Second row, standing, left to right*

Governor Post of Porto Rico  
 Governor Proctor of Vermont  
 Governor Fort of New Jersey  
 Governor Blanchard of Louisiana  
 Governor Burke of North Dakota  
 Governor Folk of Missouri  
 Governor Norris of Montana  
 Governor Hock of Kansas  
 Governor Woodruff of Connecticut  
 Governor Higgins of Rhode Island  
 Governor Glenn of North Carolina  
 Governor Deneen of Illinois  
 Governor Warner of Michigan  
 Governor Hanly of Indiana  
 Governor Comer of Alabama  
 Governor Brooks of Wyoming  
 Governor Buchtel of Colorado  
 Governor Gooding of Idaho  
 Governor Noel of Mississippi  
 Governor Hoggatt of Alaska

*Third row, standing, left to right*

General Mackenzie,  
 Chief of Engineers of Army  
 Congressman Burton of Ohio  
 Senator Bankhead of Alabama  
 Doctor Magee, Agricultural Department  
 Governor Kibbey of Arizona  
 Governor Ansel of South Carolina  
 Governor Cutler of Utah  
 Governor Lea of Delaware

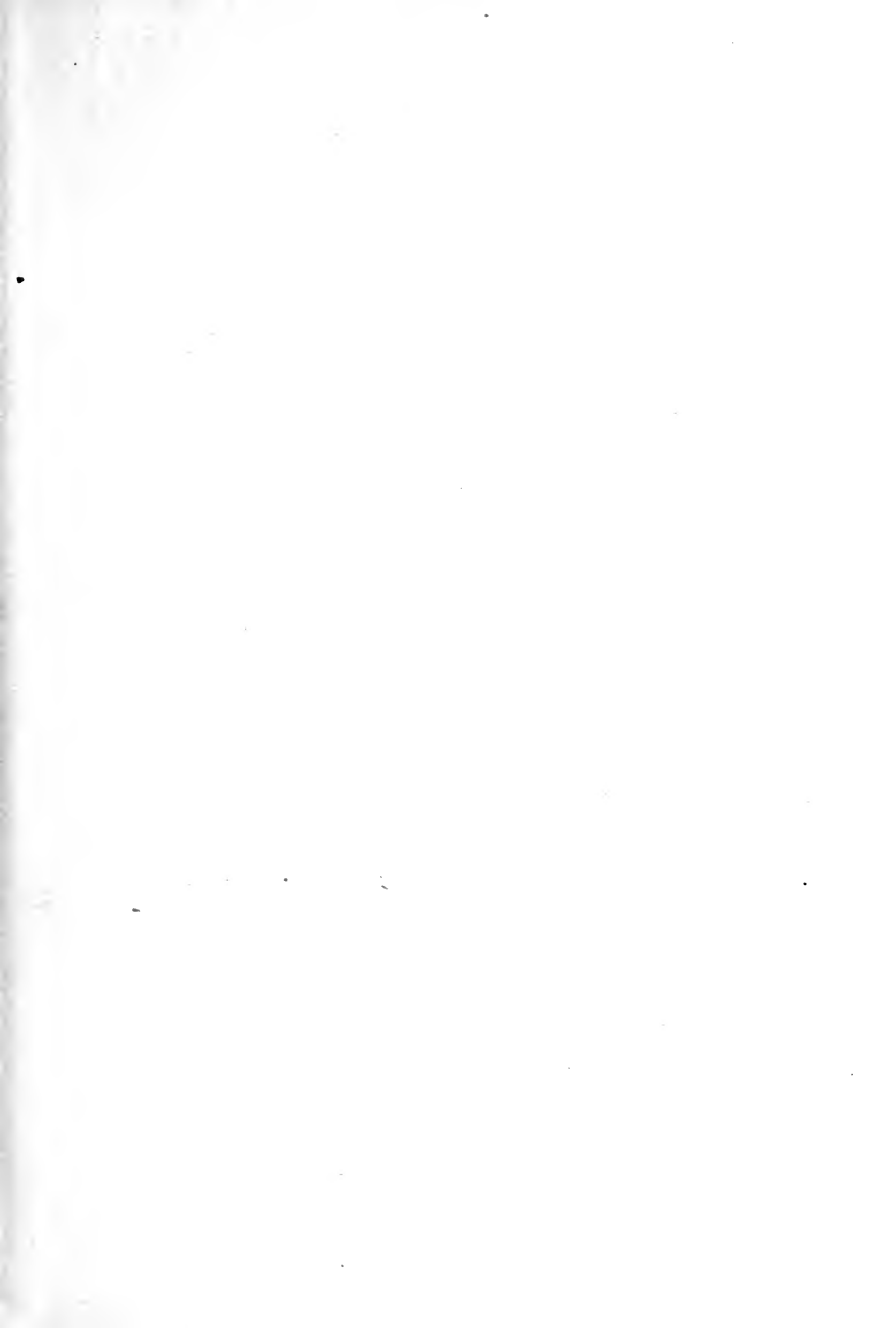
Governor Dawson of West Virginia  
 Governor Floyd of New Hampshire  
 Governor Willson of Kentucky  
 Governor Swanson of Virginia  
 Governor Crawford of South Dakota  
 Governor Stewart of Pennsylvania  
 Ex-Governor Hill of Maine  
 Governor Freer of Hawaii

*Fourth row, standing, left to right*

Mr. Thomas R. Shipp,  
 Secretary of Conference  
 Gifford Pinchot,  
 Chief of Bureau of Forestry  
 Herbert Knox Smith,  
 Department of Commerce and Labor

F. H. Newell,  
 Chief of U. S. Reclamation Service  
 Henry T. Clarke  
 Thomas Pense  
 Governor Curry of New Mexico  
 Governor Johnson of Minnesota







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Holmes	Van Devanter	Harlan	Lurton	White	Hughes	Lamar	Day
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THE JUSTICES OF THE SUPREME COURT

# PART II

## THE NATIONAL GOVERNMENT.

### CHAPTER XIV

#### THE BEGINNINGS OF UNION

**172. The Development of our National Government.**—We cannot have a national government without a united people to be governed. There was in consequence no national government in America during the colonial period, because the colonies were separate from one another. During the Revolutionary War, a central government for the union of the new States became necessary to raise armies, obtain money, and look after foreign affairs, but the government was not truly national. It was only in 1787, when the present Constitution of the United States was proposed by a convention at Philadelphia, and ratified by conventions in the States, that a national government was formed, which has grown more powerful and more useful to the Nation as the people have become more united.

Conditions affecting its development.

#### TEMPORARY UNIONS BEFORE 1781

**173. Colonial Unions.**—In colonial times, the chief cause of union among the colonies was a fear of the Indian tribes. In 1643 the four little New England colonies of Massachusetts Bay, Plymouth, Connecticut, and New Haven—none of which covered as much as two thousand square miles of settled territory—organized *The New England Confederation* for mutual defense against the Dutch and the Indians. The central government was nothing more than an advisory body, composed of two commissioners from each colony. It was expressly forbidden to interfere with the government of the colonies, and had only power to suggest how much money and how many men were needed for intercolonial protection. This Confederation, which nominally lasted about forty years, was able to accomplish very little, but showed the colonies that by uniting they might render one another valuable help in time of need.

New England Confederation.

Channing, *Student's Hist.*, §§ 72, 73.

Frothingham, *Rise of the Republic*, 39-43.

During the wars that the English were obliged to wage with the French settlements in Canada and around the Great Lakes, several congresses were held to devise plans for attack or defense. The most

Albany plan of Union (1754).

Thwaites,  
*France in  
America*,  
168-172.

important of these was held at Albany in 1754, to make a treaty with the Iroquois Indians which would prevent their aiding the French in case of another war. Delegates from seven colonies were present, and much of the time was spent considering a *proposed Albany plan of Union* suggested by Benjamin Franklin. As finally adopted by the Congress, this plan arranged for a president-general, appointed by the English King, who was to be commander-in-chief of the colonial army. Money was to be raised and expended for defensive purposes by a grand council, composed of a number of representatives from the different colonies proportional to the amount which each paid into the common treasury. This plan was universally condemned by the legislatures of the colonies, and was not considered by the English government. The time was not ripe for concerted action; nothing less than a great national movement could create a widespread demand for Union.

Unfavor-  
able condi-  
tions.

**174. Conditions affecting Union in 1760.**—The colonies were still as separate and distinct as different nations might have been. New England had little in common with the Carolinas, and many of the Puritan customs and occupations, as well as the general trend of thought, were different from those of the South. *Provincial narrowness and prejudice* were very pronounced, for the people of one colony had not been broadened by contact with the inhabitants of another.

Favorable  
conditions.

Yet all the elements of union were there. Practically all the colonists were *Englishmen*, the *language* was everywhere the same, the colonial *systems of law* were invariably built upon the common law of England, and, finally, all were of the *Protestant faith*. Taken in connection with the nearness of the colonies to each other and consequent unity of interests, these conditions made union natural, and, if a common danger threatened, union became inevitable.

The Stamp  
Act.

**175. The Stamp Act Congress (1765).**—A spirit of union among the colonists was aroused by the adoption of a new British colonial policy. In its effort to obtain from its American possessions revenue with which to pay the expenses of maintaining an army for their protection, the English Ministry, in 1764, asked Parliament to pass a law requiring that stamped paper be used for periodicals, deeds, wills, and other legal documents. This was done in 1765, and agents were appointed to sell the stamped paper, but the colonists protested, because they thought that no internal tax could be levied upon them except by their assemblies (§ 52). The agents were compelled to resign, and feeling reached such a height that when Massachusetts suggested a congress to express their views, nine of the colonies sent delegates who met in New York in October, 1765, and drew up a

Ashley, *Am.  
History*,  
§§ 127-130.

Work of the  
Congress.

Macdonald,  
*Select  
Charters*,  
No. 59.

"Declaration of Rights," stating that legally they could be taxed only by their *representatives*, that they could not be represented in Parliament, and that therefore their legislatures had the exclusive right of *internal taxation* in America.

**176. The First Continental Congress (1774).**—In the nine years that had elapsed between the Stamp Act Congress and the meeting of the one known in history as the First Continental Congress, the colonies had been growing more and more discontented with the methods used by Great Britain in taxing and governing them. In fact, several of the colonies had established (1772–1773) *Committees of correspondence*, which kept alive the feeling of hostility to the mother country, and formed a powerful, though partially organized, opposition. In 1774, the crisis was hastened by the suspension of the charter of Massachusetts and the establishment of a military government in the colony. So great was the feeling at this time that when Massachusetts again called for a congress to protest against the acts of Parliament, all but one of the colonies, fearful that their own governments might be changed as that of Massachusetts had been, managed to send delegates to Philadelphia, although the governors did everything in their power to prevent the selection of representatives.

The Congress adopted a Declaration of Rights asserting that as the colonies are not, and cannot be, represented in Parliament, "they are entitled to a *free and exclusive power of legislation* in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject alone to the negative of their sovereign, in such manner as has been heretofore used and accustomed." The Congress conceded, however, the right of Parliament to regulate external trade, if no duties were levied. A little later the members of the Congress organized an *American Association*, to carry out non-importation agreements. A committee was to be selected for each town, which should supervise the action of all citizens and organize resistance to British domination. These committees formed the first real union of the American colonists.

**177. The Second Continental Congress (1775–1781).**—Unlike its predecessors, the Second Continental Congress was not a temporary body, for it remained in session six years without authority other than the written instructions given by the colonial legislatures to the delegates of which it was composed. It was still more unlike the preceding congresses in the character of the *powers that it exercised*. All of those that had met before 1775 were purely *advisory* bodies, content with a few suggestions, but the Second Continental Congress was ex-

Change of feeling  
(1765–1774).

Work of the Congress.

Macdonald,  
*Charters*,  
Nos. 72, 73.

Hart, *Contempo-  
raries*, II,  
Nos. 153, 154

Howard,  
*Revolution*,  
280–294.

Character.

Powers.

Lecky, *Am. Revolution*, 205-209.

ecutive and legislative in one.<sup>1</sup> It organized an army and prepared a navy, regulated commerce, sent representatives to France and other countries, issued paper money, advised the colonies to form independent state governments, declared the united colonies free and independent of Great Britain, and proposed to the States the Articles of Confederation, by which the union of the States was legalized. At no time, however, did it possess any *legal* authority for the powers of sovereignty which it actually used.

## THE CONFEDERATION

Action of Congress.

**178. Formation of the Confederation.** — The formation of a confederation included three steps: (1) the drafting of articles of union by a *committee*, (2) the adoption of the Articles in *Congress*, (3) the *ratification* of the Articles by the *States*. In June, 1776, when Congress appointed a committee to draw up a Declaration of Independence, a second committee of one from each State was selected to write out articles of union, which should define more exactly the powers of Congress and the relation of the States to one another. The Articles of Confederation reported by this committee on July 12, 1776, were debated in Congress during 1776 and 1777. Finally, in November of the latter year, they were adopted by that body with many changes, and referred to the state legislatures, for the Articles were not to become binding upon any State until ratified by all. Most of the States gave their consent without great delay, but Maryland refused to sign the Articles until her neighbor Virginia gave up her claims to that vast region in the West which Virginia had considered a part of her domain. For this reason, it took from 1776 to 1781 to form the first constitutional union of the States.

Ratification by the States.

State sovereignty.

**179. The States under the Confederation.** — The *objects* of the Confederation are stated in the third article. "The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever." In doing this, however, each State claimed to retain "its *sovereignty*, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

Fiske, *Critical Period*, 93-101.

Nevertheless, there were several *prohibitions placed upon the different state governments* in order to prevent them from interfering with

<sup>1</sup> In this Congress each State had but one vote.

the work of Congress. They were not allowed to enter into negotiations, nor to make treaties or alliances, with one another or with foreign powers, without the consent of Congress. No army or navy could be equipped by a State, nor could any declare war, except in case of actual invasion. Duties were not to be levied by the States if they interfered with the enforcement of any commercial treaty made by Congress.

Alliances and other things forbidden.

One of the chief advantages of the new union was the establishment of an *interstate citizenship*. The citizens of every State were "entitled to all the privileges and immunities of free citizens in the several States," and were allowed perfect freedom to come and go from one to another, doing business in which one they pleased. Full faith and credit was given in every State to the records and judicial proceedings of the courts and magistrates of every other, and, if a criminal fled from one State to another, he was to be given up to the officials of the State in which his trial was to take place.

Interstate relations.

**180. The United States Government under the Confederation.** — The only central government consisted of a Congress and such officers and committees as it might appoint. Each State was allowed to send to *Congress* from two to seven delegates, who were paid out of the state treasury and might be recalled at will; but no State, however large it might be, had more than *one vote*. Each year the Congress selected a president to preside over its meetings, and a committee of one from each State which looked after the affairs of the United States when the Congress was not in session. In its executive work, Congress was also assisted by the three departments of Foreign Affairs, War, and Finance.

Organization of Congress.

In *theory*, Congress controlled all matters of common interest, such as making war or treaties, creating an army and navy, regulating the value of coin, arranging treaties with the Indians, and settling interstate disputes regarding land claims, but scarcely any important law could be passed without the consent of nine States. To pay its expenses, it had authority to borrow money or emit bills of credit, but most of the revenue was to be obtained directly from the States, each contributing the amount which Congress thought just.

Theoretical powers of Congress.

**181. The Defects of the Confederation.** — In *practice*, Congress was left at the mercy of the States. *It could gain no revenue* from the issuance of paper, as it could not redeem its outstanding notes. The requisitions made by Congress for money were paid grudgingly or ignored entirely, and, as Congress had no means of forcing the States to pay their shares, it was compelled to borrow money for current expenses. Before long even this resource failed it, for it was unable to

Weakness of Congress.

Curtis, *Constitutional Hist.*, I, 115-119, 157-167.

pay the interest on what it already owed, and its credit had become gradually poorer, until no one was willing to lend it money.

Need of an executive.

In *executing the laws* which it passed, Congress encountered the same difficulties as in collecting revenue. It had been given power to make laws not for the people, but for the States. As there was no separate federal executive, it would have been difficult to enforce the laws of any kind under the most favorable circumstances, but, as Congress acted solely on the state governments, it was utterly unable to coerce them if they cared to ignore its requests or its laws. For this reason, although Congress had the right to pass so many laws, there was danger that it might become absolutely helpless.

Specific and general defects.

*Federalist*, Nos. XV, XVI.

The *four most important specific defects* were: (1) the inability to provide revenue for expenses, (2) the lack of an executive or the power to enforce laws, (3) the failure to regulate commerce (§183), and (4) the impossibility of remedying these defects, because no amendments could be passed except by a unanimous vote of the States. The fundamental defect grew out of the very nature of the Confederation, since *each State was practically sovereign*.

Failure of the Confederation.

Fiske, *Critical Period*, 142-147, 162-177.

**182. The Significance of the Confederation.**—In order to obtain the *revenue* without which it could not even keep up an appearance of activity, Congress *proposed amendments* asking the States for permission to lay duties upon goods imported from abroad. The first request was made in 1781 for a tariff of five per cent upon imports; but, as the Articles could be amended only by *unanimous* vote of the state legislatures, and as Rhode Island would not consent to granting this power to Congress, the amendment failed of ratification. A second attempt to gain revenue from a similar source failed because only twelve States favored the proposal. Thus Congress, without money to pay its debts, without power to enforce its demands, became less and less useful, and at length not enough of its members attended its sessions to do business. Meanwhile each State was regulating its own commerce with the other States and with foreign powers in any way that its own interests dictated, and a species of *commercial warfare* was being waged among some of the States. The only remedy for this condition of affairs was to have free trade within the States and uniform regulations for foreign commerce. It was therefore evident that more power must be given to Congress, or that a new central government must be established.

McLaughlin, *Confederation*, 39-46, 55-60, 140-167.

Importance of the Confederation.

Jealousy of any government which exercised its rule beyond the limits of any one State led the States to assert their separate sovereignty and independence. In every way *the Union was sacrificed to the States*, because of their deep-seated dread of a government that was not



local. Yet when we consider the situation—the intense spirit of localism, the narrowness that marked many of the political actions of the people, the fear of oppression through union which was constantly present during colonial times, and the inexperience in forming a legal union of the states, *we cease to wonder that the Confederation was so imperfect*. Indeed, if we compare the Congress of the Confederation with the Second Continental Congress, considering that the latter was exercising *war powers* without any direct legal authority—powers that in time of peace might disappear entirely—we can realize, perhaps, that the Confederation was a more perfect union than the one existing in 1776.

### General References

Hinsdale, *The American Government*, §§ 98–165.

Ashley, *The American Federal State*, §§ 77–105.

Channing, *Students' History of the United States*, §§ 113–178.

Fiske, *Critical Period of American History*, pp. 50–220.

Curtis, *Constitutional History of the United States*, I, pp. 1–220.

McLaughlin, *Confederation and Constitution*, pp. 3–167.

### Topic

THE STAMP ACT: Channing, *Students' History*, §§ 119–126; Fiske, *American Revolution*, I, pp. 14–27; Lecky (Woodburn), *American Revolution*, pp. 67–96; Frothingham, *Rise of the Republic*, pp. 163–200.

### Studies

1. The Committees of Correspondence. Frothingham, *Rise of the Republic*, pp. 261–284.
2. Declaration of Independence. Tyler, M. C., in *North American Review*, 163 (1896), 1–16.
3. Commercial discriminations of the States under the Confederation. Fiske, *Critical Period of American History*, pp. 142–147.
4. The nationalizing influences of the public domain. Fiske, *Critical Period*, pp. 187–196.
5. Did the Confederation represent a higher type of union than that existing in 1776? Give your reasons in full.

## CHAPTER XV

### GENESIS OF THE CONSTITUTION

Proposal  
of the  
conference.

Fiske,  
*Critical  
Period*,  
213-218.

Meeting  
of the  
conference.

McLaugh-  
lin, *Confed-  
eration*,  
172-183.

**183. The Annapolis Conference.**—The proposal for a revision of the Articles of Confederation came in an unusual and quite informal way. Maryland and Virginia had been discussing whether they should appoint commissioners to consider the navigation of the Potomac River, the southern bank of which formed the boundary between the two States, and to arrange a uniform system of tolls and duties. A few far-sighted leaders in the Virginia legislature thought it would be a good idea to invite the other States to appoint commissioners who should meet with these at Annapolis, and talk over the subject of interstate and foreign commerce. This was accordingly done, but only five of the States were represented at the *Annapolis conference*, which met in September, 1786, although nine had selected commissioners. Most of these men realized that only by increasing the *power of Congress over commerce* could the existing commercial difficulties be settled. They consequently adopted the suggestion made by Alexander Hamilton, that the Congress then in session be asked to call a *convention* to meet in Philadelphia the next year. After revising the Articles of Confederation, the convention was to submit its suggestions to Congress and the state legislatures.

### THE CONVENTION AT WORK

Purpose  
of the  
convention.

**184. The Meeting of the Philadelphia Convention.**—It would naturally be supposed that Congress would favor any movement to increase its own power, but, actuated by jealousy, it refused to sanction a constitutional convention.

But so urgent was the need for some change that the state legislatures proceeded to elect delegates, and, after the majority had chosen representatives, Congress gave its consent. We must bear in mind that this convention was called solely for the purpose of *revising the Articles of Confederation*, and not with any idea of making a new national constitution. Fortunately, the States had elected some of their ablest men as delegates, and these men did not hesitate to proceed at once to form a Constitution of an entirely different type, because they believed the Articles of Confederation could never be amended so that they would be satisfactory. *They thought that the Articles were built upon a wrong foundation*—state sovereignty—and they therefore decided without delay to frame a constitution that should rest not upon the States alone, but upon individual citizens. The foresight, wisdom, and courage of “the Fathers,” as the members of the convention are often called, in taking this important step, has not been questioned by any succeeding generation.

Curtis, *Constitutional Hist.*, I, 237-245.

The first regular session was held on May 25, 1787, with delegates from nine States present. All of the others, except Rhode Island, were also represented most of the four months during which the convention held its meetings. Popular confidence was assured from the start, because the delegates included such men as George Washington, Benjamin Franklin, James Madison, Roger Sherman, Oliver Ellsworth, John Dickinson, Robert Morris, John Rutledge, Charles Pinckney, and Charles Cotesworth Pinckney. Nevertheless, it was deemed wise to make the *sessions secret*, in order that the people might not be prejudiced because of any differences of opinion in the convention, and that they might not be asked to judge of the revision until it was completed. Behind closed doors, the convention began its work by choosing George Washington chairman, and by agreeing that *each State should have one vote, as in Congress*.

The convention organized.

Fiske, *Critical Period*, 224-229.

**185. The Virginia Plan.**—The first serious work of the convention began when the delegates from Virginia suggested a plan which had been drafted by Madison for a central government entirely different from that of the Confederation. This outline, known in history as the “Virginia plan,” favored a *Congress of two houses*, the members

Congress.

Fiske,  
*Critical  
Period*,  
236-242.

of the lower house to be chosen by the people, and those of the upper house to be chosen by the lower from candidates nominated by the state legislatures. This Congress was to have "the legislative rights vested in Congress by the Confederation, and, moreover, to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."

Executive  
and judi-  
cial depart-  
ments.

The new scheme provided for an *executive department*, which it will be remembered the Confederation did not have, but the plan did not state whether there should be only one executive like our President, or a council like the English ministry. Finally, there was to be a *national judiciary* to decide cases that came up under the laws made by Congress. This Constitution was to go into operation when adopted by conventions chosen especially for that purpose.

Objections  
to the  
Virginia  
plan.

**186. The New Jersey Plan.** — The convention went into committee of the whole and discussed the Virginia plan for several weeks, the majority being heartily in favor of its resolutions. But several of the delegates from small States considered it too radical, as they feared to grant so much power to a government that might be controlled by the large States. These men drew up revised Articles of Confederation, which are usually called the "New Jersey plan," because offered to the convention by William Patterson of that State. This plan proposed *an enlargement of the powers of the old Congress* by giving that body the right to levy duties and other taxes, and provided for an executive and a system of national courts. After a rather brief debate, the committee of the whole adopted the Virginia plan with some modifications, and reported to the convention.

McLaugh-  
lin, *Confed-  
eration*,  
212-219.

Provisions  
of the New  
Jersey plan.

Contest  
between  
the large  
and small  
States.

**187. The Connecticut Compromise.** — Although a Congress of two houses seemed preferable to a single chamber, the convention was divided on the question of how it should be composed. The *large States* naturally wanted the number of members in both houses to depend upon the population of the States represented, but the *small States* insisted that one or both should be like the Confederate Congress, in which each State had one vote. Over this question of *representation* there was a long and bitter debate which was finally settled by adopting a compromise proposed by the Connecticut delegates. By this first, and perhaps greatest, of the compromises for which the United States has been famous, each State was

*Cambridge  
Mod. Hist.*,  
VII, 246-249.

Provisions  
of the  
compromise.

to be represented in the lower house according to its *population*, and the Senate was to be composed of two senators from each State, each of whom, unlike the delegates to the Confederate Congress, had a vote of his own. To pacify the large States, the House of Representatives was to have the exclusive right to introduce measures for the raising of revenue.

McLaughlin, *Confederation*, 221-235.

**188. The Three-fifths Compromise.**—The convention had already decided that when direct taxes were levied, each State should contribute according to its population, so that an enumeration of the people was now necessary for the assessment of direct taxes as well as for representation in the House of Representatives. We might imagine that it would be a very simple matter to count the number of people in a State, but the convention had trouble with this question because of the slaves who were very much more numerous in the South than in the North. Were they to be counted the same as whites? Of course, the Southern delegates did not wish the negroes counted when direct taxes were paid, but they did wish them to be enumerated when representatives were appointed. The North wanted the opposite in both cases, so that a compromise was adopted, by which *five negroes were counted as equal to three whites* when reckoning the population *for either direct taxation or representation*.

Direct taxes and apportionments.

Counting of negroes.

Fiske, *Critical Period*, 256-262.

**189. The Compromise over Navigation Acts and the Slave Trade.**—The last compromise, as well as the second, dealt with the question of slavery. The extreme Southern States demanded the right to import slaves without restrictions, but practically all of the others were opposed to the slave trade. In the North commerce was the chief industry, and the New Englanders insisted that navigation acts should be passed by Congress in the same manner as ordinary bills. The South, on the contrary, believed that her agricultural interests would be in danger, unless a two-thirds vote was required for all laws relating to commerce. These sectional differences made necessary the last great compromise.

Demands of North and South.

Fiske, *Critical Period*, 262-267.

The compromise.

Cambridge  
Mod. Hist.,  
VII, 278-283.

The South agreed to permit the passage of *navigation acts* by a majority of each house of Congress, in return (1) for the privilege of *importing slaves* for twenty years, or until 1808, the tax upon these slaves not to exceed ten dollars per head, and (2) the provision that *exports should never be taxed*, the Southern exports of that day being the most important source of that section's wealth.

Term and  
election of  
the Presi-  
dent.

**190. Completing the Work of the Convention.** — For the Presidency, most of the members favored a single person, because the committees of the Confederation had been so unsatisfactory; but in regard to election, reëligibility, and length of term, the convention did not know its own mind. They first voted in favor of a *term* of seven years without reëlection, then changed to six, went back to seven, and, during the closing weeks of the sessions, decided upon four, with reëligibility. The *election* of the President presented a much more difficult problem. They were afraid to make him subordinate to Congress by leaving the choice to that body, did not dare intrust election to the people, and were unwilling to leave it to the state legislatures. After agreeing to two of these plans at different times, they finally hit upon indirect election through competent electors chosen by the States.

Stanwood,  
Hist. of  
Presidency,  
1-9.

Fiske,  
Critical  
Period,  
277-285.

Progress of  
the work.

It must not be thought that all of the time of the convention was devoted to settling disputes. Week after week the work progressed slowly but surely, points being settled quickly if little difference of opinion existed, but being delayed often by debate and honest differences of opinion. The Virginia plan was used practically as the foundation upon which the new Constitution was erected, and on September 17, 1787, the document was completed and signed by delegates from twelve States.

Fiske,  
Critical  
Period,  
301-305.

The closing  
session.

Madison closes his "Debates," which are our chief source of information regarding the sessions of the convention, with this very suggestive account. "Whilst the last members were signing, Doctor Franklin, looking towards the President's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had round it difficult to distinguish in their art a rising from a setting sun. 'I have,' said he, 'often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising and not a setting sun.'"

## RATIFICATION AND PROVISIONS

**191. Feeling of the People toward a New Constitution.**— Before the Constitution could go into effect, it was to be ratified by conventions called in the different States for that purpose. If accepted by nine of these States, it went into effect “between the States so ratifying the same.” When we consider, however, that the Philadelphia Convention possessed no legal authority to frame a national Constitution, that *the mass of the people did not fully appreciate the evils of the Confederation*, and that even those who did, being much attached to their state governments, were unwilling to surrender any of the State’s authority to Congress, we can see that the outlook for ratification was by no means bright.

Prejudices to be overcome.

McLaughlin, *Confederation*, 277-281, 287-288.

No sooner had the convention adjourned than the members who had returned to their respective States, and other advocates of the proposed government, began to organize their followers so as to secure the necessary ratification. Though few in numbers at first, they included most of the able and progressive political leaders, and, by skillful management and forceful argument,<sup>1</sup> won over to the side of the Constitution the doubters, and many who at first opposed the change. These men were known as the *Federalists*, while those who favored a government like that of the Confederation, in which the States practically controlled Congress, were called the *Anti-Federalists*. The latter had quite an advantage, because the people as a whole were prejudiced in favor of state supremacy, and did not relish a change that strengthened the national government at the expense of the States.

Conditions favorable to ratification.

Curtis, *Constitutional Hist.*, I, 623-640.

<sup>1</sup> The discussions over the Constitution produced a large number of able papers from the advocates or opponents of the new plan. Among these, a series discussing the whole situation and the provisions of the Constitution in detail has become famous among political documents under the title of *The Federalist*. The authors were Alexander Hamilton, James Madison, and John Jay, and their commentary stands to-day as the ablest exposition of the Constitution in existence.

*Doxe* in Convention by the Unanimous  
 Day of September in the Year of our Lord one  
 of the Independance of the United States of  
 We have hereunto subscribed our Names,

Delaware { *Geo. Read*  
*Gunning Bedford junr*  
*John Dickinson*  
*Richard Bassett*  
*Geo. Brooks*  
*James M. Hewitt*

Maryland { *Saml. J. May*  
*Don. Carroll*  
 Virginia { *John Blair*  
*James Madison Jr*

North Carolina { *Wm. Blount*  
*Park. Batts Speight*  
*Thos. Williamson*

South Carolina { *J. Rutledge*  
*Charles Cotesworth Pinckney*  
*Charles Pinckney*  
*Pierre DuRoi*

Georgia { *William Few*  
*Abn. Baldwin*



Consent of the States present the Seventeenth  
thousand seven hundred and Eighty seven and  
America the Twelfth In witness whereof

*G. Washington* - Presid.  
and Deputies from Virginia  
New Hampshire { *John Langdon*  
*Nicholas Gilman* }  
Massachusetts { *Nathaniel Gorham*  
*Rufus King*  
*W. Sam<sup>l</sup> Johnson* }  
Connecticut { *Roger Sherman*  
New York ... { *Alexander Hamilton*  
*Wm. Livingston*  
New Jersey { *David Brearley*  
*Wm. Paterson*  
*Jona. Dayton*  
Pennsylvania { *Benjamin Franklin*  
*Thomas Mifflin*  
*Robt Morris*  
*Geo. Clymer*  
*Tho: Simons*  
*Saml Ingersoll*  
*James Wilson*  
*Gold Morris*

The small States and Pennsylvania.

Fiske, *Critical Period*, 306-317.

New England.

McLaughlin, *Confederation*, 286-295.

The last four States.

Fiske, *Critical Period*, 331-346.

Preparations for the new government.

**192. The First Nine States.** — The good work that the convention had done in pacifying the small States by adopting the Connecticut compromise, was shown in the readiness with which the small States accepted the Constitution. In Delaware, after a very brief session, it was ratified unanimously on December 6, 1787, while in New Jersey and Georgia came unanimous votes but little later. Pennsylvania was the first of the large States to fall into line, her convention, on December 17, deciding in favor of the new government by a vote of 46 to 23.

The New England States decided a little less promptly. Connecticut gave its approval without great delay, but the New Hampshire Convention adjourned without action, and the stormy debates in the *Massachusetts* Convention lasted a month. Nowhere was the attachment to local government so strong as in the Bay State, and the opposition made a strong plea on the ground that the new Constitution created a consolidated government which would be a menace to state rights and individual liberty. The Massachusetts Convention was finally persuaded to ratify, on condition that the majority ask Congress to submit to the States a number of amendments. New Hampshire later gave its consent by a close vote, but not until both Maryland and South Carolina had ratified. This was the last of the nine States necessary for the establishment of the Constitution.

**193. The Later States.** — Conventions were in session in both *Virginia* and New York when New Hampshire gave its decision. In the former the vote was taken four days later, resulting in a small majority for the Federalists. Here, again, the agreement was made to ask for certain amendments, embodying a bill of rights similar to those in the state constitutions. The *New York* Convention continued to debate the question for several weeks, during which the masterly arguments of Alexander Hamilton converted enough of the Anti-Federalists to give to the Constitution a majority of three. North Carolina and Rhode Island did not ratify at this time, the former entering the Union in November, 1789, and the latter in May, 1790.

Meanwhile Congress was making its preparations to inaugurate the new government. Almost exactly a year after the members of the Philadelphia Convention had signed the Constitution, the Congress of the Confederation named the first Wednesday in January, 1789, as the day for selecting presidential electors, and the first Wednesday in March for the first meeting of Congress under the Constitution.

**194. The Preamble** shows that the new government was to be radically different from the old, for the Union was no longer a "firm league of friendship" formed by the States, but a United States which represented a united people. As the preamble expresses it, "WE THE PEOPLE of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America."

Contrast with the Articles of Confederation.

**195. Grant of Power to the United States Government.** — The work intrusted by the people of the United States to their new central government was carefully stated in the Constitution. It was in a form of a grant of powers made to Congress, which that body might exercise by making laws which the President should enforce and the courts interpret. These powers were so much more numerous than those formerly permitted to the Congress that the new Congress cannot rightly be considered the successor of that of the Confederation. The one was a feeble dwarf, the other a powerful giant. Under the Constitution, *taxes* of almost every conceivable kind might be imposed, not upon the States, but upon individuals, so that a failure of revenue was not again probable. *Foreign and interstate affairs*, including the regulation and control of commerce, were left to the national government. Congress had the right to declare war, to raise an army and construct a navy, unhampered by any requirements that the States should be consulted before these powers could be used. Many other powers were conferred, among them the right to make laws for the public *territory*, and to admit new States. Congress might make any laws that were "necessary and proper" for carrying into execution these powers which had been expressly enumerated in the Constitution, and all other powers granted to any department or officer of the new government.

Character of the grant.

Enumerated powers.

Schouler, *Constitutional Studies*, 115-147.

Prohibitions  
on the  
States.

Hinsdale,  
*Am. Gov't*,  
§§ 434-445.

Organiza-  
tion of  
the three  
depart-  
ments.

Ashley, *Am.*  
*Fed. State*,  
§§ 128-132.

Methods of  
amendment.

Burgess,  
*Political  
Science*,  
I, 143-154.

To make less probable the interference of the States with Congress, *prohibitions* were placed upon them denying them the right to make treaties, lay duties, declare war, or attempt other things without the consent of Congress. And to make assurance doubly sure, the Constitution expressly declared that the Constitution, the national laws, and the treaties should "be the *supreme law of the land*." The lesson of inefficiency taught by the Confederate Congress had been well learned.

**196. The Departments of the New Government.** — The machinery of government under the Constitution was as much more elaborate than that of the Confederation as the new powers were more complete than the old. The *law-making branch* was still called Congress, but there were now two houses. In one of these, the *Senate*, each State had two members; in the other, the *House of Representatives*, the number depended on the State's population, although every State had at least one. The senators were to be chosen by the state legislatures for six years, one third retiring at a time, but the representatives were to be elected by popular vote every second year. The *President*, who had all of the executive power, was to be chosen for a term of four years by electors equal in number to the representatives and senators from the States, and all United States *judges* were to be selected by the President and confirmed by the Senate, holding office thereafter during good behavior.

**197. Amendment of the Constitution.** — The evils of the Confederation might have been avoided partially but for the provision of the Articles that there must be no amendment without the consent of all of the States. That changes might be made in the Constitution as need arose, *two methods* were provided for *proposing amendments* to it: first, by two thirds of both houses of Congress; second, by a convention called at the request of two thirds of the state legislatures. If these proposed amendments were *ratified* by three fourths of the state legislatures, or by conventions elected in

three fourths of the States for that purpose, they became parts of the Constitution. Strangely enough, all of the fifteen amendments that have been adopted were proposed by Congress and ratified by the state legislatures.

One clause of the Constitution — that giving the States equal suffrage in the Senate — cannot be amended except with the consent of every State. The excepted clause.

### General References

- Walker, *Making of the Nation*, pp. 19-62.  
 Hinsdale, *The American Government*, pp. 87-143.  
 Fiske, *The Critical Period of American History*, pp. 213-345.  
 McLaughlin, *Confederation and Constitution*, 168-336.  
 Bancroft, *History of the United States*, VI, pp. 195-474.  
 Curtis, *Constitutional History of the United States*, I, pp. 221-697.  
 Madison, *Debates in the Federal Convention*; also Vol. V of Elliott's *Debates*.

### Topics

1. THE CONNECTICUT COMPROMISE: Fiske, *Critical Period*, pp. 244-253; Bancroft, *History of the United States*, VI, pp. 246-269; Curtis, *Constitutional History*, I, pp. 386-420; Madison's *Debates*, Scott's ed., pp. 251-357.
2. SOURCES OF THE CONSTITUTION: Curtis, in Winsor, *Narrative and Critical History of America*, VII, pp. 237-246; Johnson, A., in *New Princeton Review*, IV (1887), 175 *et seq.*; Bryce, *American Commonwealth*, abridged ed., Chapters II-IV; Taylor, *English Constitution*, I, pp. 1-79; Robinson, J. H., in *Annals of American Academy of Political Science*, I, pp. 203-243.

### Studies

1. Why was a new constitution necessary? (Hamilton, *The Federalist*, Nos. XV, XVI, XXI, XXII.)
2. Compare the New Jersey plan with the Articles of Confederation, noting similarities and differences. ("New Jersey Plan," in Madison, *Debates*, pp. 163-167.)
3. Compare the Constitution with the Virginia plan, noting especially what features of the Virginia plan were dropped. (Consult Ashley, *American Federal State*, §§ 109-111, and Madison, *Debates*, pp. 59-64.)

4. Examine the work of the Committee on Detail. Madison, *Debates*, pp. 449-462.

5. Patrick Henry's arguments before the Virginia Convention. Curtis, *Constitutional History*, I, pp. 663-671.

6. Hamilton's victory in New York. Curtis, *Constitutional History*, I, pp. 674-680, 684-687.

7. Why was it a blessing that the Articles of Confederation could not be amended easily?

8. Notice the first three objects of the Constitution as stated in the preamble, and show what specific difficulties were to be removed. Fiske, *Critical Period*, Chapter IV.

### Questions

1. How many members were elected to the convention? How many were present on the last day? Of these, how many refused to sign? (Hinsdale, *American Government*, §§ 188, 197.)

2. Which state convention ratified by the narrowest margin? Which were unanimous? Which proposed the most amendments? (McMaster, *History of the People of the United States*, I, p. 501, note.)

3. What is the difference between the qualifications of senators and representatives? (Constitution, Art. I, §§ 2, 3.)

4. Which were the "small States," according to the apportionment of representatives in the Constitution? (Art. I, § 2.)

5. What special powers has each house of Congress? (Constitution, Art. I, § 2, cl. 5; § 3, cls. 6, 7; Art. II, § 4; Art. I, § 7, cl. 1; Art. II, § 2, cl. 2; Amendment XII.) What is the penalty if convicted after impeachment? (Art. I, § 3.) Who may be impeached? (Art. II, § 4.)

6. What is the process of legislation? (Art. I, § 7.)

7. Name the chief powers of Congress. (Art. I, § 8.) Why is the name "elastic clause" a good one for clause 18, § 8, of Art. I?

8. What is meant by the writ of *habeas corpus*? by an *ex post facto* law? a capitation tax?

9. What restrictions are placed upon Congress in spending money? (Constitution, Art. I, § 9, cl. 7; § 8, cl. 12.) Give the chief prohibitions placed upon the States. (Art. I, § 10.)

10. May the President or a congressman accept a present from the King of England? (Art. I, § 9, cl. 8.)

11. Who may be elected President? (Art. II, § 1, cl. 5.) How is the President chosen? (Amendment XII.)

12. May the President pardon a person guilty of treason? How are treaties made? (Art. II, § 2.)

13. What national courts are created solely by law of Congress ?  
(Cf. § 346 with Constitution, Art. III, § 1.)

14. What is treason ? (Art. III, § 3.)

15. Could Congress create a State of East Texas without consulting the Texas legislature ? (Constitution, Art. IV, § 3.)

16. Why are all state officials compelled to take oath to support the Constitution of the United States ? (Constitution, Art. VI, § 1, cl. 2 ; cf. § 219 of this book.)

## CHAPTER XVI

### CONSTITUTIONAL CHANGES SINCE 1787

Social and  
industrial  
changes  
since 1787.

**198. Introduction.** — It is neither possible nor desirable that our Constitution or national government should remain unchanged during a century which has brought us a great expansion of territory, population, and national resources, and little less than a revolution in the means of transportation, methods of doing business, and in the national feeling of the people. As a matter of fact, during the debates of the Philadelphia Convention, one of the delegates went so far as to assert boldly that no one expected the Constitution they were then framing would be in use a century later. Yet so well did "the Fathers" do their work that to-day the Constitution of 1787, with only fifteen amendments, is still the foundation of our federal Union and of our national government. We must not suppose, however, that the Constitution is really the same now as then. Its *form* is almost identical with that of a hundred years ago, but its *spirit* has been modified greatly. In 1790 the people were much more attached to their state governments than to that of the Nation, and, in consequence, the national government was not allowed to do many things that we consider perfectly proper, although *nominally* Congress had almost as much power then as now. This simply means that many of the *chief changes in the Constitution* since 1787 have not been made by constitutional amendments added to that document, but by a more *liberal construction* of the powers granted to the national government in the original Constitution. How the powers of the national government have been enlarged,

Character  
of constitu-  
tional  
changes.

Ashley, *Am.  
History*  
§§ 383-386.



by a free interpretation of the Constitution and by usage, shall be explained briefly after examining the fifteen regular amendments.

## THE AMENDMENTS

**199. The National Bill of Rights.**—As we noticed in the last chapter, some of the States ratified the Constitution on condition that certain amendments be proposed which would protect the States and individuals from any possible invasion of their rights by the national government. The first Congress therefore passed, by the necessary two-thirds vote of both houses, a number of amendments which, taken together, formed a Bill of Rights. Ten of these were ratified by three fourths of the state legislatures, and proclaimed by the Secretary of State, Thomas Jefferson, to be a part of the Constitution, December 15, 1791.

Reasons for its adoption.

Schouler, *United States*, I, 113-115.

The *provisions* of the first eight amendments, which are concerned with specific personal rights, may be classified under two heads: (1) those that prohibit Congress from restricting *individual rights*; (2) those which protect individuals brought before or *on trial* in United States courts. The first two amendments make it impossible for Congress to establish a state religion, or deny to any one religious liberty, freedom of speech and of the press, the right to petition the government, and to bear arms. The third and fourth prevent Congress from quartering soldiers in private homes without the consent of the owner, and from allowing national officers to search homes except by warrants that describe the property to be seized. The last four of the eight give accused persons the right to a speedy jury trial with every opportunity to prove their innocence. We should especially notice that no one of the eight attempts to prohibit the States from doing these things, for *they are restrictions upon the national government only*.

Two classes of provisions.

Ashley, *Am Fed. State*, §§ 556-562.

**200. The Ninth, Tenth, and Eleventh Amendments.**—Lest individual citizens should not be fully protected by these detailed provisions, the *ninth amendment* goes on to state that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." To prevent encroachments upon the rights of the States as well as upon those of the citizens, the *tenth amendment* declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Thus the chief objection to the Constitution; namely, that it was a menace to

General character.

the liberties of the citizens and the rights of the States, was so far removed that the Anti-Federalists, who had sought to prevent its adoption, ceased to exist as a political party.

Suits  
against  
States.

The States were, however, very jealous of their rights, and when the Supreme Court decided in 1792 that a State might be sued in a United States court by a citizen of another State or by a foreigner, a resolution for an *eleventh* amendment was proposed, which denied to the national courts jurisdiction of such cases. This was carried through Congress without difficulty, and was ratified by three fourths of the States before 1798.

Presidential  
elections.

McMaster,  
*United  
States*, III,  
183-187.

**201. The Twelfth Amendment.** — It is quite remarkable that only one amendment has been necessary to correct defects in the organization or methods of the United States government. According to the original Constitution, the presidential electors were to name two candidates for President without specifying which should be President and which Vice President. Then, in case of a tie vote, the House of Representatives was to select the President, the delegation from each State having one vote. Election in the House became necessary in the third presidential election (1800), Thomas Jefferson and Aaron Burr having seventy-three votes each in the electoral college. Because of party strife, the House did not decide in favor of Jefferson until sixteen days before the inauguration. To avoid a repetition of this difficulty, a *twelfth amendment* was adopted in 1804, which made it necessary for the electors to *name the office for which each candidate was selected*, but, as formerly, each State was allowed to decide in what way its electors might be chosen. Whenever the electors failed to choose a President, the House of Representatives was to select that official from the three who had the largest number of votes, and in case no Vice President was chosen, the Senate was to select one from the two whose electoral votes were greatest.

Period  
between  
1804 and  
1865.

**202. Later Amendments.** — For more than sixty years after the adoption of the Twelfth Amendment, there were no changes in the written Constitution of the United States. Yet silently but surely, through a liberal interpretation of the Constitution and the use of powers about which no one had thought at first, the national government gained in power and in prestige. This shows that *the Constitution was undergoing a change*, for the government of the United States derives its authority from the people through the Constitution.

Restrictions  
upon the  
States,  
in the last  
three  
amend-  
ments.

We can see how differently the people felt toward the Constitution in 1789 and in 1865 by noticing that *the first eleven amendments restricted the power of the UNITED STATES GOVERNMENT* in certain respects, while *the Thirteenth, Fourteenth, and Fifteenth Amendments placed*

*certain limitations upon the States.* One chief cause of the great war that was fought upon American soil during the years from 1861 to 1865 was the institution of slavery — an institution which was under the control of the state governments, except in the territories, and which had been abolished in the North by the States long before 1861. When, therefore, the Southern Confederacy of slave States was beaten in the great struggle, the first thought of the North was to give the slaves *freedom*, the second to give them the rights of *citizenship*, and the third to grant them the *right to vote*. In doing these things, the Nation, through the national Constitution, told the States that thenceforth they must not countenance slavery, nor deny to any one the right of citizenship or suffrage because of his color.

**203. The Thirteenth Amendment.** — The first of the war amendments, the Thirteenth Amendment of the Constitution, was passed by two thirds of both houses of Congress early in 1865, and was ratified by the necessary number of States within less than a year. It provided that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

**204. The Fourteenth Amendment.** — A little later many members of Congress felt that some of the former slave States were trying to re-establish slavery by the passage of apprenticeship laws which restricted the freedom of the negroes. To avoid the dangers that might arise from such a possibility, an amendment was proposed *making the blacks citizens*,<sup>1</sup> and providing that, if a State did not allow negro men to vote, the State's representation in the lower house of Congress should be correspondingly reduced. As the States which had belonged to the Southern Confederacy were obliged to accept this amendment before they were allowed to select senators and representatives, this amendment was ratified by the constitutional three fourths of the States and declared to be a part of the Constitution, July 28, 1868.

*The restrictions placed upon the States by the first section of Amendment XIV are very important and are of two kinds* — the one *negative*, because no State is allowed to abridge the privileges and immunities of citizens of the *United States*; the other *positive*, inasmuch as no State may "deprive *any person* of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In other words, the amendment not only prevents the States from interfering with the rights which

Willoughby,  
*Am. Const'l*  
*System*,  
100-110.

Bascom, J.,  
in *Annals*  
*Am. Acad.*,  
27 (1906),  
597-609.

Slavery.

Burgess,  
*Reconstruction*  
and  
*Cons't.*,  
26-30.

Citizenship.

Tiedeman,  
*Unwritten*  
*Cons't.*, of  
*U. S.*, 93-107.

Two kinds  
of restric-  
tions on  
state power.

Willoughby,  
*Am. Const'l*  
*System*,  
180-189.

<sup>1</sup> The important provisions of the amendment regarding United States and state citizenship are explained in the next chapter, §§ 222-224.

any citizen possesses by virtue of his United States citizenship (§ 223), but it says to the States, "If you take away from a citizen without due process of law any rights which he has because of his *state citizenship*, he will be protected in *national* courts." It is impossible to imagine such a restriction of state powers at the time the Constitution was adopted, and this shows clearly how much more united the people of the Nation were in 1868 than in 1787.

Suffrage.

Boyle, J. E.,  
in *Arena*,  
31 (1904),  
481-488.

**205. The Fifteenth Amendment** became a part of the Constitution in 1870, five years after Lee had surrendered to Grant at Appomattox. Its real and avowed purpose was to grant the ballot to the freedmen, for it provided that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude." A large number of people believed that the only way to protect the freedmen properly at the time the amendment was adopted was to grant them the privilege of voting, but many now feel that it was a mistake to place the ballot permanently in the hands of a large ignorant class. In consequence, Congress has not interfered even when some Southern States have discriminated directly against the negroes and the national courts have, as much as possible, left the States free to make such suffrage laws as they desire.

## THE UNWRITTEN CONSTITUTION

The supplementary  
Constitution.

Bryce, *Am. Commonwealth*,  
abr. ed.,  
271-274.

Willoughby,  
*Am. Const'l System*,  
141-153.

**206. What the Unwritten Constitution is Like.**—As the written Constitution is brief and does not go into detail, it is supplemented in a great many respects by statutes and by customs which deal with important principles of government. These determine how extensive the powers conferred by the Constitution really are, and in what ways the work of the national government shall be carried on. It must be perfectly evident that if Congress is permitted "to regulate commerce with foreign nations and among the several States," to cite but a single case, it makes a very great difference whether Congress may control foreign commerce by prohibiting all trade with other nations and may control *all corporations* which sell their goods in more than one State, or whether the only regulations it can make are formal and mechanical rules which simply measure the

William H. Seward,  
Secretary of State of the United States,  
To all to whom these presents  
may come, greeting:

Whereas the  
Congress of the United States on  
or about the sixteenth of June,  
in the year one thousand eight  
hundred and sixty-six, passed a  
resolution which is in the words  
and figures following, to wit:

**Joint Resolution proposing an Amendment to the Constitution of the United States.**

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid as part of the Constitution, namely:

**ARTICLE XIV.**

**SECTION 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

**SECTION 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**SECTION 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

**SECTION 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

**SECTION 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SCHUYLER COLFAX,  
Speaker of the House of Representatives.  
LA FAYETTE S. FOSTER,  
President of the Senate pro tempore.

Attest:  
EDWD. McPHERSON,  
Clerk of the House of Representatives.  
J. W. FORNEY,  
Secretary of the Senate.

**PROCLAMATION ANNOUNCING RATIFICATION OF AMENDMENT XIV  
(OPENING PAGE)**

volume of trade without affecting it in any way. For this reason the *interpretation* of a written Constitution is frequently of much greater importance than the original document seemed to be, for it may be altered greatly to meet the needs of a later period in the history of the Nation. Often the real vitality of a provision of our written Constitution depends almost entirely on some *custom* which is not necessarily recognized as a part of our written law. The importance of our "unwritten constitution" cannot be estimated easily, for the UNWRITTEN CONSTITUTION *includes all of the statutes, judicial decisions, and usages which increase the powers of the central government as defined in the Constitution or alter the methods proposed by it.*

Expansion  
of powers.

New  
powers.

Popular  
government.

**207. The Most Important Features of the Unwritten Constitution** may be stated as follows: (1) *The whole body of law and custom supplementing the Constitution has greatly broadened that instrument and expanded the powers exercised under it.* How the national government has been strengthened by a liberal interpretation of the Constitution can be seen in the succeeding sections. (2) *New powers* have been assumed and exercised by our national government for which no authority can be found in the written Constitution except by a distortion of some provision of that document. Since the United States is now recognized as a Nation in which the people of the Nation are unquestionably sovereign, the central government now does many things by virtue of its position, as the governing body of a Nation, unless these powers are *forbidden* by the Constitution or *interfere with the work of the States*. (3) *The national government has become an essentially democratic government* with its chief officials elected by the men of the Nation, and its principal departments directly responsive to the popular will. The history of the change from the government by classes which existed in 1789 to the government by the people of to-day, is the history of the extension of the elective franchise from landowners then to men

now. *This change has, in fact, been accomplished almost solely by alterations in the STATE laws regarding SUFFRAGE, as the Constitution allows the States to decide who shall vote even for national officials. The unwritten Constitution determines the real nature of our federal system of government, defining the spheres of activity of the States and the Nation, and showing the working relations of the two sets of governments (§§ 212-216, 219-221). (4) Secession from the Union is not possible, although the subject is not mentioned in the Constitution, and the right to secede was formerly claimed by many of the States located in different parts of the country.*

Relations of  
States and  
Nation.

**208. Enlargement of the Original Powers of Congress.—**

The Constitution gives Congress the right to make any laws that are "necessary and proper for carrying into execution" the powers explicitly granted to that body. This *elastic clause* has enabled Congress to make, upon subjects not directly mentioned in the Constitution, laws which have added greatly to the authority of the national government. For example, within less than two years after the Constitution went into operation, a bill was passed creating a United States bank, which not only issued a national currency, but aided the government in doing its work. Fifteen years later, Congress, having been given authority to *regulate* foreign commerce, laid an embargo upon all commerce with France and England, thus *prohibiting* instead of regulating that branch of business. The power to levy duties on imports has been made the basis of a tariff which is designed to aid industry rather than to produce revenue. Vast sums have been spent in improving rivers and harbors, in laying out roads, and in giving free mail delivery and other postal facilities that the Constitution does not mention. Public lands have been given lavishly to corporations for trans-continental railways, and to the States for the improvement of the schools. As those are but instances of an extension of authority that is becoming greater with national

Use of  
"implied  
powers."

Constitu-  
tion, Art. I,  
§ 8, cl. 18.

expansion, the development of the Constitution in this direction may be appreciated.

In connection with internal affairs.

**209. New Powers of Congress.**—It may be difficult to draw a line between many of the powers exercised under the "elastic clause"<sup>1</sup> and some for which the original Constitution makes no provision whatever, but certain acts performed by the national government are no doubt opposed to the wishes of the framers of the Constitution, or are outside the sphere of powers originally granted to the government of the Nation. Some of these deal with functions which a century ago would have been considered exclusively the domain of the States. The valuable work done by the Department of *Agriculture*<sup>2</sup> is of this class. Many necessary regulations for the *industrial corporations* which do business in several States must be justified because of the national need for such regulation, and not because Congress may control interstate commerce. The issuance of *paper money* during the Civil War was a war measure, but the retention and reissuance of those paper notes or greenbacks in time of peace was unquestionably opposed to the expressed and implied views of the men who composed the Constitutional Convention of 1787. During the Reconstruction period, also, Congress interfered with States which had claimed to be sovereign by compelling them to perform certain unpleasant duties before they might again take part in the work of the national government or resume their exercise of their normal work as States. This interference was justified legally because the "United States shall guarantee to every State in this Union a republican form of government,"<sup>3</sup> but it was really an assertion, under abnormal conditions, to be sure, of *the right possessed by Congress to maintain the sovereignty of the Nation.*

External powers.

In connection with external affairs there has been the acceptance of the same wise principle that our Constitution

<sup>1</sup> Constitution, Art I, § 8, cl. 18.

<sup>2</sup> See §§ 284-289.

<sup>3</sup> Constitution, Art. IV, § 4.



must be a constitution for to-day and not a narrow one for yesterday. Congress has been allowed to annex *territory* by joint resolution of the two houses. It has made for part of our possessions, the Philippine Islands, for example (§ 268), laws which have placed Congress above the Constitution within that territory, because the sovereignty of the Nation demanded that the territory be ruled in such a way as would serve best the interests of the entire people.

Willoughby,  
*Am. Const'l  
System*,  
190-204.

**210. Changes in the Presidency.**—The members of the Constitutional Convention intended to have the President chosen for a term of four years by discreet men called "electors," who were to use their *own judgment* in selecting the chief executive. We all know, however, that only the first two Presidents were chosen in that way, and that for a long time presidential electors have been *partisans* who, having been elected by popular vote in the different States, must vote for candidates nominated by their respective party conventions. Nothing in the Constitution would prevent a President from holding office for several successive terms, as President Diaz of Mexico has done, but custom, in the form of the "third term tradition," has fixed eight years as the maximum period for any President.

Election of  
the Presi-  
dent.

*Constitu-  
tion*, Art. II,  
§ 1, cl. 2.

In carrying out his wishes, every President is aided by executive officers, nine of whom form an advisory *Cabinet*, a body not mentioned in the Constitution. The relations of the Cabinet as a whole to the President, and of each member as a head of his department, are determined entirely by the unwritten Constitution. So far as the written Constitution is concerned, our Cabinet might have become the real governing body of the Nation, as England's cabinet is.<sup>1</sup>

The  
Cabinet.

Ashley,  
*Am. Gov't*,  
§§ 327-331.

The power of the President has been greatly increased by the unwritten Constitution. He was originally allowed to appoint all of the important national officials with the consent of the Senate, but nothing was said about his power of *removal*. Except for twenty years (1867-1886), he has not

Adminis-  
trative  
powers.

*Constitu-  
tion*, Art. II,  
§ 2, cl. 2.

<sup>1</sup>See Ashley, *American Federal State*, §§ 389-396.

been obliged to consult the Senate in removing an official, and has thus been able to make all national executive officers responsible to himself, greatly to his own advantage.

Treaty and  
military  
powers.

By virtue of their right to make treaties, several Presidents, beginning with Jefferson in 1803, have acquired vast *territories*, although the Constitution is silent on this subject. In protecting United States mails and United States property, our Presidents have likewise increased their power at home by the use of the *military forces*.

Important  
constitu-  
tional inter-  
pretation by  
the courts.

Cooley (ed.),  
*Const'l Hist.*  
*as seen in*  
*Const'l*  
*Law*, 30-43.

**211. The National Courts and the Unwritten Constitution.**—In one sense the most important parts of our unwritten Constitution have been developed because at the very beginning of our history as a Nation the Supreme Court of the United States established its right to decide when the other departments of the government had exceeded their powers. The Constitution gives to the national courts jurisdiction of all cases “arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority.” Many conservative people believed that the courts could not affect the Constitution in doing this, but Chief-Justice Marshall proved that the Supreme Court could not decide cases arising under the Constitution without *interpreting the Constitution* itself. By doing this he established a principle of the unwritten Constitution which was largely responsible for the great development of national authority noted in the preceding sections; namely, that the people of the Nation, through the Supreme Court, were the final interpreters of what powers the national government might exercise. The Court, therefore, could decide the all-important question of our history—what is the relation of the States to the Nation and to the national government—a relationship that is discussed in the next chapter.

### General References

- Ashley, *The American Federal State*, §§ 120, 212, 228-231, 554-562.  
 Hinsdale, *The American Government*, §§ 623-631, 644-652.  
 Bryce, *The American Commonwealth*, abridged ed., pp. 254-284.  
 McMaster, *With the Fathers*, pp. 182-221.  
 Tiedeman, *Unwritten Constitution of the United States*.  
 Willoughby, *American Constitutional System*.  
 Cooley, *Principles of Constitutional Law*, pp. 214-357.  
 Cooley, *et al.*, *Constitutional History as seen in Constitutional Law*.  
 Curtis, *Constitutional History*, Vol. II.

### Studies

1. Hamilton's views on the doctrine of implied powers. MacDonald, *Select Documents of United States History*, pp. 81-98.
2. Discussion of Amendment XIV in Congress. Burgess, *Reconstruction and the Constitution*, pp. 73-79.
3. The development of the Constitution. Bryce, *The American Commonwealth*, abridged ed., pp. 271-284.

### Questions

1. May a person be tried twice for the same offense? (Amendment V.)
2. What rights has any individual to "life, liberty, and property"? (Amendments V, XIV.)
3. If a person is tried for murder in a United States court, where must the trial be held? (Amendment VI.)

## CHAPTER XVII

### THE NATION AND THE STATES

Character of  
our federal  
system.

**212. The Interdependence of the National and State Governments.** — By the adoption of the national Constitution in 1787, the people of the United States created a *federal system* of government. This Constitution recognizes the existence of *two spheres of government, the one national*, including all powers which can be properly exercised only by a single government for the whole people, *the other, state*, including all other powers of government. Under existing arrangements, the national government and the system of state governments are dependent upon each other, for each does half of the work of governing the country, but neither can become subordinate to the other, for both are controlled directly by the people of the entire Union. To perform the task assigned it, *each is complete within itself for certain purposes, but incomplete without the other for the great purpose it subserves — the government of the American people.*

### GENERAL DISTRIBUTION OF POWERS

Provisions  
of the Con-  
stitution.

Hinsdale,  
*Am. Gov't*,  
§§ 225-233.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
225-232.

**213. The Classes of Governmental Powers.** — We find that the Constitution of the United States and its amendments define quite clearly the duties of the national government, and suggest the duties left in charge of the States. In that instrument, the attempt is made to grant the government of the United States all powers that the States could not satisfactorily exercise, because united action was necessary. From the nature of the case, these powers belonging to the United States government were considered *delegated*, and were

therefore *enumerated*. Those left to the States were to include all others, frequently called *residuary* powers.

It is possible to distinguish *five* classes of governmental powers:—

Five classes  
of powers.

I. Those granted exclusively to the national government by the Constitution of the United States.

Willoughby,  
*Am. Const'l  
System*,  
135-141.

II. Those reserved exclusively to the States.

III. Those powers which may be exercised by either the national government or the States, called concurrent.

IV. Powers denied to the national government by the Constitution.

V. Powers denied to the States by the Constitution.

**214. The Sphere of the National Government** includes both *exclusive* and *concurrent* powers, but these are always delegated. Yet delegated powers may be either expressed or implied powers. No one nowadays denies that the United States government has the right to supplement the powers expressly stated in the Constitution, by such means as are reasonable and wise to carry out these powers. That is, we are, in practice, broad constructionists of the phrase that Congress has the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers (Constitution, Art. I, § 8, cls. 1-17), and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Expressed  
and implied  
powers.

Willoughby,  
*Am. Const'l  
System*,  
141-144.

Nevertheless, it is generally admitted that the United States government does not have exclusive powers, unless

Exclusive  
powers.

(1) the Constitution expressly states that the power granted to the United States government is exclusive, or unless (2) a power which is given to it is, at the same time, denied to the States, or unless, (3) from the very nature of the power, it could not be exercised by both the Nation and the States.

**215. The Sphere of State Activity.**—Although the States are excluded, either by express prohibition or by implica-

General  
character

Wilson,  
*The State*,  
§§ 1088-1095.

Ashley,  
*Am. Gov't*,  
§§ 167-171.

tion, from the greater part of national affairs, they control all other subjects of government except those denied to all governments, and consequently reserved to the people. Lest there should be doubt in any one's mind on that point, the Tenth Amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." In this amendment we have given the means of determining whether a power is rightfully exercised by a State. This is done by finding out what does not belong to the State. If a power is given to the central government alone, or if it is prohibited to the States by the Constitution, it cannot be used; *all other powers belong to the States*, and can be exercised by the state governments unless the state constitutions forbid.

Private and  
criminal  
law.

As we noticed in Chapter XIII, *this field in which the State is supreme is one of great importance, not only from the variety of the subjects included, but from their personal relation to the individual.* Practically all matters belonging to the criminal and to the private law are regulated by the States, including laws regarding property, and the business and personal relations of one individual to another.

Administra-  
tive and  
socialistic  
functions.

The States have complete charge of all local governments, of education, of the elective franchise, of most corporations, police duties, marriage and divorce, the poor, the delinquent classes, and public health. Legislation on these subjects, and the administration of the laws made upon them, may be left by the States to the state government or the local governments; but at present the control of the States over all of them is exclusive and absolute. In addition, the States exercise the concurrent powers mentioned in the next section.

Taxation.

**216. Powers concurrently exercised by the United States or the State Governments.**—The general power of *taxation* may be exercised by either the central or the state governments. Yet there are limitations placed upon either one or the other in regard to certain kinds of taxes; *e.g.* the United States government cannot levy direct taxes except in proportion to the population, neither can it lay a duty on exports from the States at all, nor tax state property. The States cannot tax external commerce except with the consent of Congress and for the national treasury, nor can they tax national banks or national property. Otherwise, either government may tax what it pleases or

borrow money, and it is only by custom that the taxes do not overlap.

Several classes of concurrent powers are those which are left to the regulation of the national government, but in which the States may legislate in case the United States fails to take any action. The subject of *bankruptcies* offers many examples of this state of affairs, for Congress has not seen fit to maintain a national law during most of our history, so the States have in the interim passed laws suited to their own needs; but these become invalid as soon as the central government acts. The case of the *militia* is somewhat similar. Many details of the elections of representatives and senators may be controlled by Congress, but in default of national laws the States do as they please.

Bankruptcies and the militia.

In the concurrent jurisdiction of the United States and state courts, we have an instance similar to these last classes. Many suits may be brought in either state or national courts at the option of the plaintiff, although the final decision in these suits always rests with courts of the Nation.

National and state courts.

**217. Prohibitions on the United States Government.**—The most significant prohibitions placed by the Constitution upon the national government exclusively are for the protection of the individual. Those given in the *first eight amendments* we have already considered (§ 199). In addition, the national government may not grant titles of nobility, pass bills of attainder, which deprive persons of life or property by act of legislature, enact *ex post facto* laws, which consider as crimes offenses that were not criminal at the time they were committed, nor may it permit slavery. Congress is not allowed to define treason, for a definition of that all-important word is placed in the Constitution itself.<sup>1</sup> The privilege of the writ of *habeas corpus*, which gives an accused person the right of immediate trial, may not be suspended except in case of great danger. Individuals are *protected from the arbitrary expenditure of money* by the provision that

Regarding personal liberty.

*Constitution*,  
Art. I, § 9.  
Amendments I-X,  
XIII.

<sup>1</sup>The Constitution provides (Art. III, § 3) that "Treason against the United States shall consist in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same act, or on confession in open court."

no money shall be drawn from the national treasury unless in accordance with appropriations made by law. They are *secured against military oppression* by the restriction that no appropriation shall be made for the army for a period of more than two years. They are protected in general by the system of checks and balances in the Constitution.<sup>1</sup> According to Amendment V, no one may be "deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

Regarding  
uniform  
regulations.

There are other prohibitions or limitations less closely related to individual liberty, but intended rather to *guard the States against discriminating legislation*. No export duty can be levied by Congress, all duties on imports and internal taxes are to be uniform throughout the United States, and no commercial preference is to be given one State over another. When a direct tax is levied, it must be in proportion to the population as given in the last census.

For benefit  
of national  
government.

Constitu-  
tion,  
Art. I, §10.

**218. The Prohibition on the States.** — Prohibitions have been placed upon the States by the national Constitution for one of two reasons: (1) to prevent the States from interfering with the work of the national government; (2) to protect American citizens from arbitrary action on the part of the state governments. In order to protect the *government of the United States*, the States are forbidden to make treaties or alliances with other States or foreign nations, to have an army or navy in time of peace, to lay imports, coin money, emit bills of credit, make anything but gold or silver a tender in payment of debts, and to pass laws impairing the obligation of contracts.

For protec-  
tion of  
individuals.

Among the prohibitions or limitations for the protection of *individuals* are the following: No State shall grant a title of nobility, pass bills of attainder, or *ex post facto* laws. No state shall maintain any but a republican form of government, or countenance involuntary servitude, *except for*

<sup>1</sup> See Ashley, *American Federal State*, § 123.



the punishment of crime, nor deny the elective franchise to any citizen of the United States because of race, color, or previous condition of servitude. Finally, no State shall abridge the privileges or immunities of citizens of the United States or deprive any person of life, liberty, or property without due process of law.

### INTERDEPENDENCE OF THE NATIONAL AND STATE GOVERNMENTS

#### 219. The Relation of the State and National Constitutions.

— When considering the constitutions of the States (§ 160), we noticed that the constitution of any State must be changed if it conflicts with the national Constitution. The reason for this is really very simple: the Constitution of the United States is just as much a part of the fundamental law of every state, as is the constitution of that State. Any state constitution is intended to supplement that of the Nation within that State, since the United States Constitution is intentionally silent regarding the greater part of the State's government and work. *The law of any State, and of the States taken as a whole, consequently includes five things:* (1) the Constitution of the United States; (2) laws passed by Congress in accordance with the Constitution; (3) treaties made by the national government; (4) the constitution of the State; (5) the laws made by the state legislature. That the Constitution of the United States is a real part of the law of every State may be shown by the constitutional requirement that all members of the state legislature, and all executive and judicial officers of the State, shall be bound by oath or affirmation to support the national Constitution.

Supplementary character.

Bryce, *Am. Commonwealth*, abr. ed., 233-238.

*Constitution*, Art. VI, cl. 3.

Under ordinary circumstances, these laws and constitutions *supplement* each other; but they may *conflict*. In that case, the courts are authorized to set aside one of the conflicting articles. Such an article in the state law must yield to all of the others, and an article in a state constitution

Conflict of constitutions.

*Constitution,*  
Art. VI, § 2.

gives way to the laws of the Nation, the treaties and the United States Constitution; for these three are "the supreme law of the land, and the judges of every State shall be bound thereby, anything in the Constitution or laws of the State to the contrary, notwithstanding."

Use made  
of state  
suffrage  
laws.

**220. The Work performed by the States in National Elections.**—The close relations existing between the Nation and States is emphasized by the use made of state laws and governments in national elections. Congressmen and other United States officials chosen by popular vote are elected by voters whose qualifications are prescribed by state and not by national law. The only restriction upon the States is that contained in the Fifteenth Amendment.

Dependence  
on the  
States in  
elections.

In the selection of presidential electors, the States are allowed to decide whether they shall be chosen by the legislatures or by vote of the people. The choice of United States senators belongs exclusively to the state legislatures, although Congress may regulate the details of senatorial elections, except for the place where a legislature meets. The arrangement of the districts from which members of the House of Representatives are chosen, is made by the state legislatures subject to national law. It might seem as though in all of these respects the national government is left at the mercy of the state governments. However true that may be in theory, in practice the States have never sought to prevent the organization of the national government. Their failure to make such an attempt is sufficient proof that they believe the central government would be less injured than themselves, by their refusal to take part in national elections. Moreover, it would be absurd to create, for the choice of a few national officials, local districts which had no connection whatever with the States and their subdivisions.

The execu-  
tion of law.

**221. The Unity of Our Federal System** is further emphasized in the working relations of the national and state governments. Each has its own duties, which are different,

with few exceptions, from those of the other, and which it performs through its own officials. United States laws are enforced by national executive officers and interpreted by national courts, side by side with the laws of the States carried into effect by officials of the States. *Every person within the boundaries of a State is subject, therefore, to the jurisdiction of the state and national governments.* He renders obedience to both, because both are doing work assigned to them by the people of the whole Union. If, by any possibility, both try to force him to obey laws which relate to the same subject, but which are incompatible, he must determine, first of all, whether the national government has authority to make the law it wishes him to obey, and, if it has this right, he must obey it without question. If it exceeded its authority in passing the law, he must obey the state officials. Whether the obedience is rendered to officials belonging to the state government or to the central government in reality, it is rendered to the people of the United States, who are represented by both sets of these officials. In other words, *a citizen's allegiance is not divided, for it is due to the people of the whole Nation, who are sovereign, and to them alone.*

Bryce, *Am. Commonwealth*, abr. ed., 238-242.

Willoughby, *Am. Const'l System*, 122-134.

### AMERICAN CITIZENSHIP

**222. The Dual Character of American Citizenship.** — Because of the arrangement for the government of our country by two authorities, state and national, it is customary to speak of the dual character of American citizenship. Every citizen is said to be a citizen of the *United States* and a citizen of a *State*. Those rights of citizenship which are protected by the national government, because they are directly connected with its work, a citizen is said to possess by virtue of his being a citizen of the United States. The rights he has under the government of the State belongs to him because he is a citizen of the State. With each form of citizenship are inseparably linked the obligations of obedi-

Citizenship of the State and the United States.

Willoughby, *Am. Const'l System*, 241-249.

ence to the authority that protects him in the enjoyment of his rights.

Definition of citizenship.

The definition of a citizen is given in the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." As Indians on reservations are not really "subject to the jurisdiction" of the United States, they are not citizens. All others born in this country or of American citizens abroad, are citizens.

Naturalization.

Naturalization is either individual or collective. Collective naturalization occurs when a large number of persons are given the rights of citizenship by treaty, constitutional amendment, or congressional law. The process of individual naturalization is described in § 288.

Rights protected by the national government.

**223. The Rights of United States Citizenship.**—Among the privileges and immunities enjoyed by a citizen under the national government are the right to transact business with that government, "to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several States. . . .

"Another privilege of a citizen of the United States is to demand the care and protection of the federal government over his liberty, life, and property when on the high seas or within the jurisdiction of another government. . . . The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State. . . . A citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same

rights as other citizens of the State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendments,"<sup>1</sup> and by the clauses of the fourteenth.

**224. State Citizenship.** — While no State can create citizenship by its laws, the larger part of the rights of citizens are left to the supervision of the state governments, just as the sphere of state activity is larger than that of the central government. It would be difficult to enumerate all of these rights, but among the most important are protection by the state government in matters over which it has control; right to life, liberty, and property, except as restrained for the general good; right to make contracts; to sue and be sued; to inherit, purchase, lease, hold, and dispose of real or personal property; and exemption from unjust taxation or unusual fines or penalties.

Rights protected by state governments.

The franchise is *not* a right of citizenship. It is a political privilege conferred by a State upon such of its members as it deems fit to exercise such a privilege. *Voters and citizens are not the same.* The latter are much more numerous, but a State may confer the right of suffrage upon aliens, if it wishes. It may also give an alien the rights of state citizenship, though it cannot make him a citizen.

The elective franchise.

### General References

Hinsdale, *The American Government*, §§ 223-233, 419-445, 655-658, 763-772.

Ashley, *The American Federal State*, §§ 232-254.

Bryce, *The American Commonwealth*, abridged ed., pp. 224-253.

Willoughby, *American Constitutional System*.

### Studies

1. The advantages of federal systems. Ashley, *American Federal State*, §§ 235-237.

2. The working relations of the national and state governments. Bryce, *The American Commonwealth*, abridged ed., pp. 233-242.

<sup>1</sup>Justice Miller of the United States Supreme Court, in the *Slaughter House Cases*, 6 Wallace.

**Questions**

1. Enumerate the powers of Congress. (Constitution, Art. I, § 8.)
2. Name some of the implied powers now exercised by Congress. (Hinsdale, *American Government*, § 414.)
3. Tell whether the rights of a citizen would be protected in the following cases because of state or United States citizenship: (a) In inheriting property; (b) if injured in China; (c) if on trial for forging a note; (d) when attempting to make another keep a contract; (e) if condemned to be hanged for stealing something to eat; (f) if tried without a jury for treason; (g) if defrauded of a piece of land; (h) if denied the privilege of the writ of *habeas corpus* in time of peace.

## CHAPTER XVIII

### FOREIGN RELATIONS

**225. Introduction.** — Having noticed the historical development of the national government and the relations existing between the Nation and the States (Chapters XIV–XVII), we shall consider first the *powers and duties* exercised by the national government (Chapters XVIII–XXII), and complete our study by examining the organization, methods, and activities of the *different departments* of the central government (Chapters XXIII–XXVII).

The three subdivisions of Part II.

The work performed through the national government may be treated under five heads: (1) foreign relations, which are the most distinctive and, in a sense, the most essential of the tasks performed by a central government; (2) national finance, including taxation, expenditure, and debts; (3) regulations affecting internal commerce, especially money and interstate commerce; (4) territories, colonies, and public lands; and (5) miscellaneous activities, including postal service and agricultural activities.

Activities of the national government.

### DIPLOMATIC RELATIONS

**226. International Relations in General.** — The relations of civilized nations to one another are determined by long-standing customs or definite general agreements. The name *international law* is given to this code of rules and usages which define the rights of nations in their ordinary dealings with one another. These rules specify the course which must be followed by two powers at war with each other, these nations being called *belligerents*. They define the rights of other nations, or *neutrals*, and protect them from

International relations defined through international law.

Woolsey, *International Law*, 26–33.

acts of the belligerents. In time of peace they permit the migration of citizens of one country to others, and allow foreign trade to be carried on.

Protection  
of national  
rights.

As there is no international government to make, enforce, or interpret these rules, they are often indefinite or laxly observed. Every nation depends for its protection and the promotion of its interests more on its international position, its prestige, the treaties made through the skill of its foreign representatives, the size of its army, and the strength of its navy. Without these protectors it may be browbeaten and subjected to humiliations, as we were a century ago,<sup>1</sup> or as many petty States are treated to-day. If it has the misfortune to be inhabited by barbarous or semi-barbarous peoples, it may find that it has no rights which the civilized nations are bound to respect.

The United  
States as a  
world  
power.

Latané,  
*America as  
a World  
Power*,  
261-266.

*Annals of  
Am. Acad.  
Pol. Sci.*,  
26 (1905),  
1-31.

**227. International Relations of the United States.**—To-day the United States is treated not only as one of the powers of the world, but as a world power of the first importance. It is considered first and always in any international disputes affecting the Western Hemisphere,<sup>2</sup> because our own interests are paramount in North America and we are recognized as the guardian of South America. Although we refrain from interference in European politics, our views are sought, our good wishes desired, and our displeasure avoided, in all complications of world-wide significance in the far East. The United States has stood for the extension of democracy, the protection of the rights of neutrals, and the preservation of the territorial integrity not alone of Spanish American republics, but of Asiatic monarchies. Although our course has not always been marked by unselfishness and consideration for our weaker neighbors, on the whole it has been straightforward and free from petty intrigues or mean practices. We have gained the respect of the great nations without losing that of weaker States.

<sup>1</sup> See Ashley, *American History*, §§ 239, 257-264.

<sup>2</sup> Monroe Doctrine, § 230.



After considering the methods used in making treaties and caring for diplomatic relations, we shall consider the question of our commerce with other countries, concluding with a discussion of the means used to prevent war.

Divisions of  
the subject.

**228. The Negotiation of Treaties.** — The foreign policy of the United States depends to a very great extent upon the wishes of the *President*, although he does all of his business with other nations through the Department of State, and is compelled to obtain the consent of two thirds of the senators before any treaty will take effect.

The making  
of treaties.

*Constitu-  
tion*, Art. II,  
§ 2, cl. 2.

The actual negotiation of a treaty between the United States and a foreign power is conducted by the *Secretary of State* (§335), or by our *ambassador* at the capital of the nation interested. When the details are arranged in this country, the foreign minister, after receiving general instructions from his home government, confers with the Secretary of State. The Secretary, in turn, communicates with the President on all important topics. When the negotiations are conducted abroad, our ambassador is informed by the Secretary of State concerning our demands. In either case, the treaty will be signed by the principals who have been actively engaged upon it, and will then be sent to the Senate for ratification.

Process in  
time of  
peace.

Foster,  
*Practice of  
Diplomacy*,  
247-251.

Crandall,  
*Treaties*,  
54-65.

The provisions of treaties of peace at the close of international hostilities are usually arranged at the capital of some neutral nation, both contestants being represented by special *envoys plenipotentiary*, but protocols may be concluded, as at the end of the Spanish-American War in 1898, through the ambassador of some neutral power.

Peace  
treaties.

**229. Ratification of Treaties.** — In order that a treaty may not be rejected by the Senate, the executive department is accustomed to consult the leaders of the *Senate Committee on Foreign Relations*. This is done partly for the reason that these leaders know the feelings of their colleagues regarding foreign affairs, and partly because they have served the Senate so long on this committee that their

Power of  
Senate in  
treaty  
making.

Foster,  
*Practice of  
Diplomacy*,  
267-279.

Lodge, H. C.,  
in *Scrib-  
ner's*,  
31 (1902),  
33-43.

judgment and opinion becomes of great value. The Senate never hesitates to reject the whole or part of a treaty, or to amend any section. If the change is relatively unimportant, the Department of State can usually obtain the consent of the foreign government to it; otherwise, negotiations are broken off altogether, or are begun again as for an entirely new treaty.

The House  
and treaties.

Although treaties are made without consulting the House of Representatives, they are as much a part of the supreme law of the United States as statutes passed by Congress.

Foster,  
*Practice of  
Diplomacy*,  
309-311.

A treaty supersedes a previously existing statute with which it is in conflict, although it may in turn be abrogated by a later law. If a treaty deals at all with questions of finance, the injustice of not consulting the House is evident, and the more popular chamber may refuse to grant appropriations to carry such a treaty into effect.

Acquisition  
of territory.

**230. Other Foreign Affairs.** — Many Presidents, through the exercise of the right to make treaties, have won fame for themselves, and given opportunity for national development, by acquiring new territory. This expansion has added greatly to the power of the national government, not only through the prestige gained for the President by acts of such far-reaching importance, but on account of the increased use of executive and congressional authority made necessary in governing the new territories (§ 268).

Sending,  
receiving,  
and dis-  
missing  
ambassa-  
dors.

The President has the right to send or receive ambassadors, and to dismiss them. The reception of a minister from one of the great powers is an affair of great formality, whereas the reception of a representative from a new nation is a matter of equal importance, inasmuch as the reception of a minister is equivalent to the recognition of the independence of the State which sends him. The President has, therefore, the right to recognize the *international standing* of any former colony, and to decide which of the two governments of a country in insurrection shall be considered the government *de facto*. He may ask to have a minister with-

Lawrence,  
*Internat-  
ional Law*,  
§ 147.

any compensation.

## Article 10.<sup>th</sup>

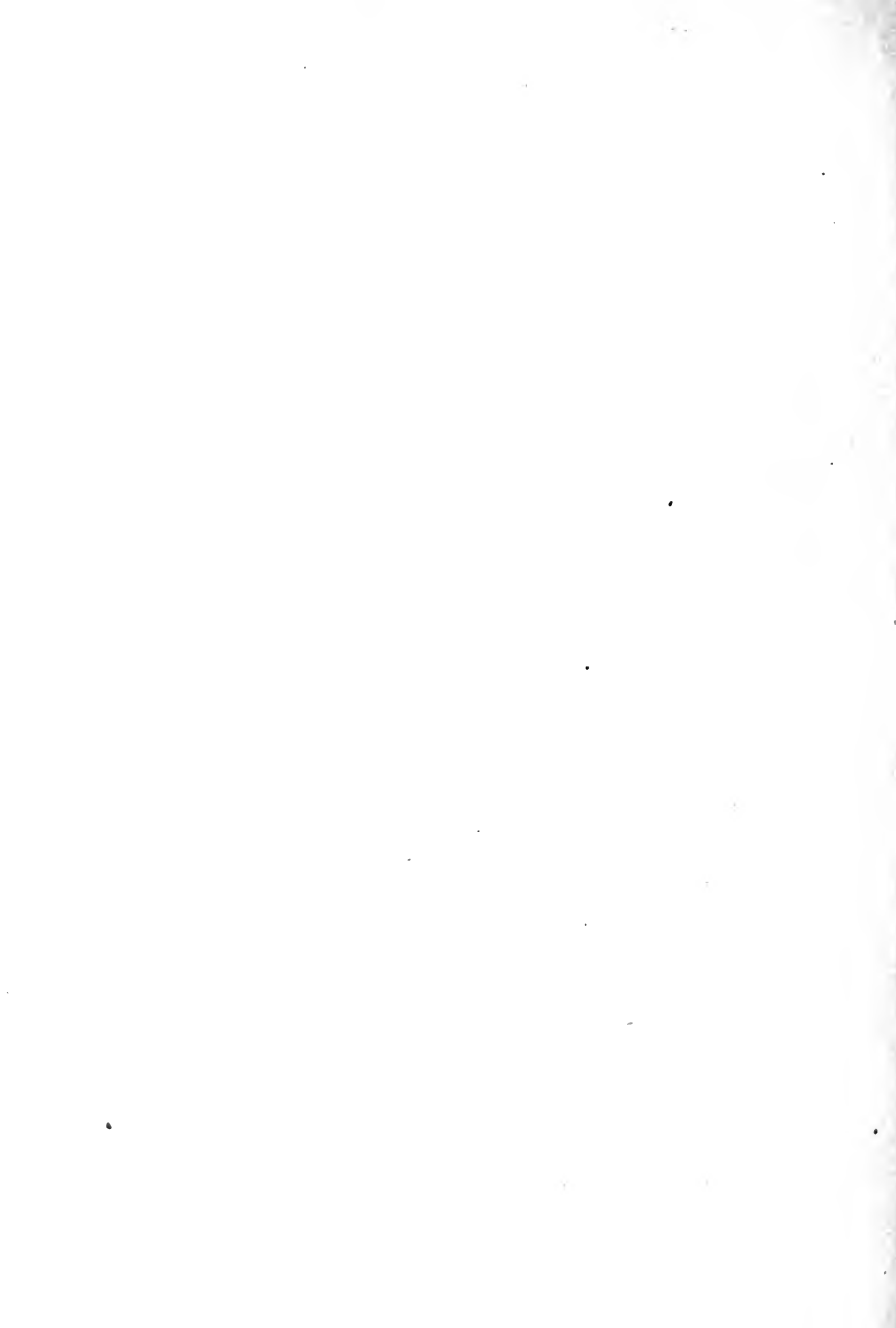
The solemn Ratifications of the present Treaty expedited in good & due Form shall be exchanged between the contracting Parties in the Space of Six Months or sooner if possible to be computed from the Day of the Signature of the present Treaty. In Witness whereof we the undersigned their Ministers Plenipotentiary have in their Name and in Virtue of our Full Powers signed with our Names the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this third Day of September, in the Year four thousand seven hundred & eighty three.

Franklin John Adams.

Franklin

John Jay



drawn, if he has become *persona non grata* to the administration for any good and sufficient reason. At the beginning of hostilities with a foreign nation, unless the minister asks for his papers, his passports will be sent to him, this act being virtually a declaration of war.

Foster,  
*Practice of  
Diplomacy*,  
55-73,  
175-191.

The messages of several Presidents have been the means of announcing new foreign policies, which have been reaffirmed by subsequent administrations. President Monroe's regular message of December, 1823, and President Cleveland's special message dealing with the Venezuela controversy, have clearly defined the attitude of the United States toward the nations of the Old World in their dealings with those of the New. It is well to bear in mind that the Monroe Doctrine, which is recognized and respected almost as a part of international law, is nothing more than the policy of the executive department developed for three generations.

Monroe  
Doctrine.

Ashley, *Am.  
History*,  
§§ 262,  
421-423.

**231. The Diplomatic Service.**—Our business of a diplomatic nature which is not transacted in Washington, is intrusted to representatives at the capitals of all important countries. To ten of these is given the title of *ambassador*, while the others are usually known as *ministers*. Their actual duties are more often social than diplomatic, for the tasks of negotiating treaties and caring for other national relations are not arduous under ordinary circumstances. These positions can be properly filled only by men with talent of a high order, broad-minded, tactful men, thoroughly familiar with the events of recent history, and quick to notice little changes in the feelings of a people. Our custom has always been to appoint party men, whose tenure has been insecure, but who fortunately are aided by fairly *permanent assistants* and secretaries of legations. We have, nevertheless, been represented abroad by some of the ablest and most scholarly men America has produced.

Diplomats:  
duties, qual-  
ifications,  
and appoint-  
ment.

Foster,  
*Practice of  
Diplomacy*,  
74-82,  
103-129.

Our foreign representatives have used the *direct methods* and have followed the *simple customs* that distinguish the

American  
diplomatic  
methods.

Foster,  
*Practice of  
Diplomacy*,  
130-158.

American people. The treaty of 1783 may be cited as a good example of the success of straightforward negotiation. Except at special ceremonies for which court dress is required of every one, our ministers are accustomed to wear "the simple dress of an American citizen."

Salaries.

The salary paid an ambassador is \$17,500, the average salary given a minister being about \$10,000. As the United States does not own buildings in the foreign capitals, and social demands make numerous inroads upon a minister's purse, only men of independent means can afford to accept diplomatic positions.

Foster,  
*Practice of  
Diplomacy*,  
91-102.

### FOREIGN COMMERCE

Need of  
national  
control  
(1787).

**232. General.** — Aside from the inability of the Confederation to obtain revenue, the principal cause of its failure was its lack of power to regulate commerce between the States and with foreign countries. Indeed, the pressing need of national control of commerce led to the calling of the Constitutional Convention of 1787 (§ 183), for the annoying laws made by the States regarding interstate commerce had caused much bitterness in some sections, and the varying state tariffs made it impossible to trade with Europe to advantage. All of this was changed when the Constitution gave Congress the right "to regulate commerce with foreign nations . . . and among the several States," and permitted the President and Senate to make commercial treaties.

*Constitu-  
tion*, Art. I,  
§ 8, cl. 3.

Aim of  
commercial  
laws.

Regulations for foreign commerce may be said to be of two kinds: (1) those that aim to help commerce in general, and (2) those that seek to restrict certain lines of trade. Every nation wishes to do as much business as possible with other countries, provided it has the best of the bargain. This is thought to be the case if it sells abroad more than it buys,<sup>1</sup> and consequently many governments make a special

*Annals  
Am. Acad.  
Pol. Sci.*,  
29 (1907),  
470-477,  
498-514.

<sup>1</sup> In every country the exports and imports are likely to be equal, an increase or decrease of the one being followed by an increase or decrease of the other. Where there is a permanently favorable "balance of trade,"

effort to increase their *exports*, while almost all have *tariffs* which limit the importation of foreign productions by rates that are often quite high. According to the Constitution of the United States, neither Congress nor the States may lay any duty upon exports, but Congress may tax imports if the rates are uniform throughout the United States and no preference is given to one part above another.

**233. The Promotion of our Foreign Commerce.**—As our success in trading with other nations is often taken as an index of our prosperity at home and our standing as a nation, Congress has passed many laws with the purpose of benefiting our trade abroad. Through the efforts of our consuls, and under the direction of the Bureau of Manufactures in the Department of Commerce (§ 431), information is being collected and distributed constantly which will aid in opening new foreign markets. The promotion of foreign commerce is accomplished chiefly, however, through such indirect means as *commercial treaties*, *ship canals*, and *harbor improvements*.

A nation cannot trade with any other nation it pleases, but must first arrange with foreign governments for international commerce through ordinary commercial treaties, some of which contain a provision known as the most favored nation clause, or by *reciprocity treaties* (§ 236). If a treaty contains a *most favored nation clause*, and either power making this treaty grants special privileges to any third nation, the other power secures for itself the same privileges without a special treaty to that effect. During the years following the Revolutionary War, we had treaties with France, Prussia, and Holland only, so were commercially at a disadvantage. Among later triumphs, that of Commodore Perry in opening the ports of Japan in 1854 is notable.

as in the case of the United States, it is due to the fact that we exchange our exports not only for imports but for transportation services, money expended by travelers, or investments abroad. See Gide, *Political Economy*, pp. 291-301.

*Constitution*, Art. I,  
§ 9, cl. 5;  
§ 8, cl. 1.

Direct and  
indirect  
means.  
Cortelyou,  
G. B., in  
*Annals*  
*Am. Acad.*  
*Pol. Sci.*, 24  
(1904), 1-12.  
*Annals*  
*Am. Acad.*  
*Pol. Sci.*,  
29 (1907),  
441-449.

Commercial  
treaties.

Schuyler,  
*Am.*  
*Diplomacy*,  
421-424.

Volume and distribution of foreign commerce.

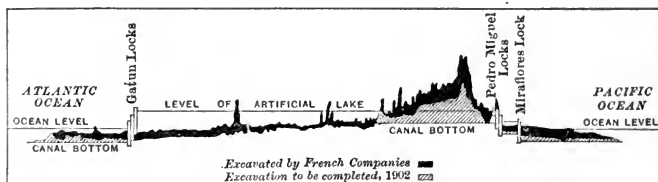
Waldron, G. B., in *Chatauquan*, 31 (1900), 499-504.

*World's Work*, 16 (1908), 10,597-10,606.

Panama Canal.

The foreign commerce of the United States amounts to more than three billions of dollars a year, the average *excess of exports* over imports being about five hundred million a year. About sixty per cent of the exports are agricultural and meat products,<sup>1</sup> about one half of which are sold to a single country, Great Britain. Manufactures of iron and steel exported amount to about the same as the exports of grain and flour, and the market is expanding constantly. Our trade with Latin America is increasing as we send our Southern neighbors each year about three hundred millions, chiefly of manufactures, and buy from them large quantities of sugar, coffee, rubber, and other semi-tropical products. Nevertheless, South America, the Philippines, and eastern Asia still trade with Europe rather than with the United States.

**234. Special Improvements and Laws.**—The interoceanic canal at the southern extremity of North America is the greatest of the undertakings of the United States government for the purpose of developing commerce. After a half



**PROFILE OF THE PANAMA CANAL**

Ashley, *Am. History*, §§ 439-442.

Harbor improvements and coast protection.

century of effort, arrangements were completed in 1903 which permitted the construction of the canal under American auspices. Since that time, good progress has been made with the work under the direction of the War Department, and the canal will be open for commerce in a few years.

Every year vast sums are spent in *river and harbor improvements* by deepening channels, building breakwaters, maintaining lighthouses, patrolling the coasts, and using other means to make navigation profitable as well as safe.

<sup>1</sup> Our exports of raw cotton for the year ending June 30, 1906, were \$401,005,921, of live stock or meat products \$251,376,410, and of grain and flour \$166,161,160.



Rivers that are used for foreign commerce have been made fit for commercial purposes at vast expense. One of the most satisfactory of these improvements is located at the mouths of the Mississippi River, where, by the simple device of narrowing the channels, the mud brought down by the river is carried far enough out to sea to prevent its obstructing the existing channels.

Gage, L. J.,  
in *Cosmo-  
politan*,  
26 (1898),  
358-365.

Many governments grant subsidies or bounties to exporters for some kinds of agricultural or manufactured products shipped abroad. For example, Germany gives a bounty one third of a cent a pound upon all beet sugar exported. The United States has never used this artificial means of stimulating trade.

Subsidies  
on exports.

At the beginning of our history under the Constitution, Congress passed several *navigation acts*. These were intended to aid ship-builders and commerce. They provided that no American could purchase ships abroad, neither could any American ship be owned in part by a foreigner. Foreign vessels were not allowed to compete in the coasting trade. They have been modified recently so that Americans may purchase ships abroad. Bills have also been proposed for subsidizing American ships, but the only *ship subsidies* ever granted by the United States were to two lines many years ago, and they were temporary. At the present time less than ten per cent of our foreign commerce is carried in American vessels, a fact which is objectionable to our national pride.

Navigation  
acts.

*Rev. of  
Revs.*,  
21 (1900),  
321-328.

**235. The Consular Service.**— We have representatives in all important foreign cities who look after American commercial interests, endeavoring to promote our foreign commerce. There are *three important classes* of these *consuls*. First, there are the *consuls general*, who are assigned to the largest cities, and have general supervision of the consuls near them, besides special charge of their own districts. The second class includes the *ordinary consuls*, who devote all of their time to the duties of their positions, and the third is made up of *residents* in small cities, who look after American interests while continuing their regular business.

Classes of  
consuls.

Foster,  
*Practice of  
Diplomacy*,  
216-220.

*The duties of consuls are varied and exacting.* They are obliged to report to the Department of State, giving infor-

Duties.

Osborne, J. B., in *Atlantic Mo.*, 99 (1907), 159-170.

Selection.  
Reforms.

Williams, C. A., in *World To-day*, 10 (1906), 393-397.

Fassett, J. S., in *Rev. of Revs.*, 33 (1906), 555-560.

Protective  
tariff.

Ashley, Am. History, §§ 407-411.

Gide, *Pol. Economy*, 314-330.

mation concerning the amount of foreign commerce within their districts, including the character of the imports and the destination of the exports. They look after American merchants abroad who may need their services, take charge of invoices of goods shipped to the United States, aid travelers, and send special reports on subjects which any American citizen wishes to investigate. Among semibarbarous peoples, cases affecting citizens of the United States are tried in consular courts, because of the imperfect administration of justice in those of the country.

During most of our history we were accustomed to change all consuls and consuls general with the incoming of an administration in Washington. This system of *political appointment*, of course, injured the service. The best of men cannot do satisfactory work for the first year or two in a position where the language and conditions are entirely unknown. When the tenure is brief, because a consulship is given solely as a reward for partisan favors, the result is disastrous. The *reform* of the worst evils of the consular system has been accomplished by granting larger pay, by training men for the service, by making appointments for fitness, and promotions for proved ability.

**236. Tariff Restrictions.**—The right to impose duties upon imports was conferred upon Congress for the purpose of obtaining *revenue*, but, especially since the Civil War, it has been used quite as much to benefit industry within the United States as to gain money for carrying on the work of the government. In other words, our tariff now is, and for a long time has been, distinctively "*protective*."<sup>1</sup> The custom

<sup>1</sup> The effect of this "protection" has been to stimulate manufacturing to such a wonderful degree that in 1900 the value of our manufactured products was seven times as great as in 1860, although our population had but little more than doubled during the same period. The restraint upon foreign commerce exercised by the tariff and other causes is seen when we compare our imports with our exports, the former having been but seventy-two per cent of the latter during the year ending June 30, 1906, leaving a "balance of trade" in our favor of nearly \$ 500,000,000 in a total commerce of three billions.

rates are high upon imported goods which will be sold in this country in competition with American products, while such articles as tea and coffee, which are not raised in the United States, come in duty free.

The policy of a protective tariff has been opposed by a great many Americans who believe that our prosperity would have been even greater than it has been if we had made use of a *tariff for revenue only*, which would allow much keener competition with foreign manufacturers.

The present tariff, known as the Payne tariff (1909), has very high protective rates in the form of a *double tariff*. There is a maximum and a minimum rate for each article imported, the minimum rates forming the regular tariff, and the maximum rates being enforced against all nations that do not give us as favorable terms as they give any other country.

Under the Dingley tariff of 1897, it was possible for the government to make *reciprocity treaties* by which the *President and Senate* (with the consent of Congress) might lower the regular duties levied on imports from a country in return for reductions made in her tariff schedules for the benefit of our exports to her citizens. In addition, if any country paid a bounty upon articles which we imported from her, the Dingley tariff permitted the *President* to increase our duties by an amount equal to the bounty. These additional retaliatory duties were used seldom, whereas a great number of reciprocity treaties were negotiated by the Department of State, some of which were accepted by the Senate.

## NATIONAL DEFENSE

**237. General.**—One of the most serious of all national problems is that of defense against other powers. Continental Europe has been forced, by the nearness of its great countries to one another, into maintaining large standing armies, but England has been able, because of her insular position, to depend chiefly on her navy. The United States, fortunate in having no powerful neighbors, has given little

Seligman,  
*Prin. of Economics*,  
§ 230.

Tariff for  
revenue  
only.

Gide, *Pol. Economy*,  
331-346.

Maximum  
and mini-  
mum tariff.<sup>1</sup>

Reciprocity  
under Ding-  
ley tariff.

Larned (ed.),  
*Hist. for Ready Ref.*,  
VI, 581-582.

*Annals Am. Acad. Pol. Sci.*,  
29 (1907),  
450-469.

Need of pre-  
paredness  
for war to  
insure  
peace.

<sup>1</sup>On double tariff, see Osborne, J. B., in *North American Review*, 181 (1905), 731-744; Stone, N. I., in *Annals of American Academy of Political Science*, 29 (1907), 478-497.

Mahan,  
*Interest of  
America in  
Sea Power*,  
175-216.

thought to the subject until recent years. The advantages of adequate military and naval preparation for war, as a *preventive of war* or as a means of its successful prosecution if attacked, have been emphasized many times in the last half century. Even with the recent development of a peace spirit and the establishment of the Hague Tribunal to prevent armed conflicts between nations,<sup>1</sup> only the most careless statesmen neglect the suggestion, "in time of peace, prepare for war."

Military  
powers of  
Congress.

To Congress has been intrusted the right to *declare war, to raise an army and create a navy, and to maintain the militia*. War is not ordinarily carried on between civilized nations without a formal declaration from one or the other that "a state of war exists" between them. Our greatest wars, those of the Revolution and of Secession, have not required such a statement, because at the opening of each conflict one of the parties to the struggle had no international standing. In the minor conflicts, the declaration of war has always been made by the United States.

*Constitu-  
tion*, Art. I,  
§8, cls. 10-16.

War powers  
of the  
President.

The *President* is commander-in-chief of the army and navy, but has never taken personal command of the military forces in time of war.

Popular  
feeling.

**238. The American Army.**—Public sentiment has compelled Congress to make our army as small as possible, since we have to-day the same dread of military despotism that made our forefathers insert in the Constitution the clause which denied to Congress the power to vote money for an army for a longer period than two years. This feeling showed itself in the law which was in force until 1898, that the *regular army* should not contain more than 25,000 enlisted men. In order to preserve order in our new colonies, an additional force was permitted by the law of Feb. 2, 1901, which placed the maximum at 100,000 enlisted men, and the minimum at 57,000.<sup>2</sup>

<sup>1</sup> On the work of the Hague Tribunal, see Foster, *Arbitration and the Hague Court*, pp. 58-78.

<sup>2</sup> The total strength of the army in 1907 was 3896 officers and 69,871 enlisted men.

In time of war the regular force is supplemented by *volunteers* who enlist usually for a term of three years or the war. During the Civil War, the enlistments numbered 2,859,132, from a loyal population of little more than twenty millions.

The present arrangement of the cavalry and infantry provides that every regiment shall contain three squadrons or battalions, each of which comprises four troops or companies. General oversight of the organization, equipment, and management of these forces is given to the *General Staff*, composed of army officers detailed for that work by the President. This Staff aids the President as commander-in-chief in the practical control of all military affairs, the chief of staff occupying much the same position as the former lieutenant general of the army.

The need of technical training of officers led to the establishment, in 1802, of the *West Point Military Academy*. Each congressional district or territory is permitted to send one cadet, these being named by the representatives when a vacancy occurs; two are appointed by the senators from every State, and forty are selected by the President from the country at large. After a four years' course, graduates of the academy are granted commissions as second lieutenants in the regular army. Non-commissioned officers are also given instruction in schools established at the army posts, or in special schools at Fort Leavenworth and Fort Riley; still more advanced training being given at the War College at Washington.

**239. The Militia.**—This branch of the military service has always been considered a most valuable one, as it theoretically includes all able-bodied men between the ages of eighteen and forty-five, a total of over 10,000,000. Only 1 per cent of these, however, are regularly enrolled and under discipline, forming the *actual militia* known as the national guard of the different States. These are in no sense like the reserves of European countries, for those reserves are composed of trained soldiers who are kept on the reserve list for years after they have served the two or three years required of them in the regular army. The militiamen may be called upon by the President to suppress insurrections and repel invasions, being subject to the same rules as the regular soldiers, except that they may be kept in

Organiza-  
tion and  
manage-  
ment of  
the army.

Leupp, F.E.  
in *World's  
Work*,  
6 (1903),  
4007-4016.

Military  
schools.

Tillman, S.  
S., in *Rev.  
of Revs.*,  
26 (1902),  
45-53.

Rules for  
organiza-  
tion and in  
service.

Parker, J.,  
in *No. Am.  
Rev.*,  
177 (1903),  
278-287.

Mathews,  
F., in *Harp  
Weekly*,  
47 (1903),  
1439-1444.

service only nine months in the year and may not be called upon to do duty outside of the United States.

Relation of  
State and  
Nation.

The general rules for the militia are passed by Congress, and provide for the method of organization, number of officers, method of election, and other details. Each State takes charge of all subjects not covered by national law. During the Civil War, President Lincoln called upon the States to furnish militiamen three times, asking for 475,000 men in all.

General  
needs.

**240. Naval Defense.**—Because of our geographical situation and our lack of powerful neighbors, *naturally dependence is placed on a navy* rather than upon an army. The long coast line with fine harbors giving entrance to our largest cities; our insular possessions in the West Indies; our interests at Panama on the borders of the sea of great future importance,<sup>1</sup> the Caribbean; our colonies in mid-Pacific and at the gateway of the far East,—all require naval and coast defense of a superior order. If navies are desirable at all, no other country, save England, requires so great a navy as the United States of America.

Specific  
needs.

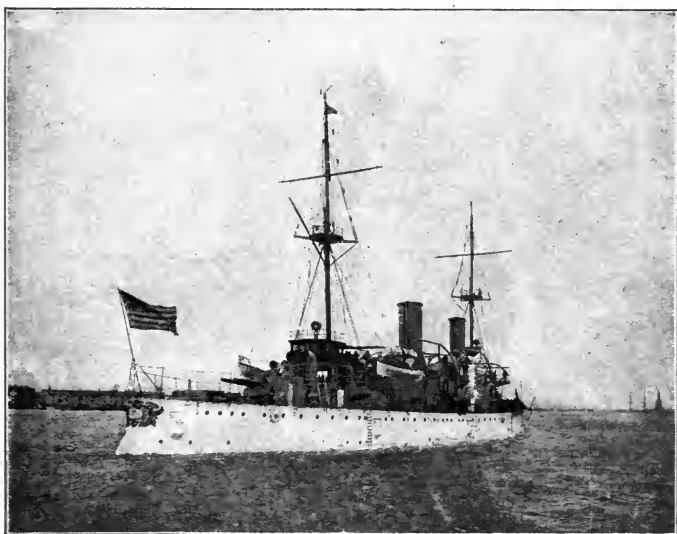
In these days when wars can be fought in one third the time a battleship can be constructed, there seems to be no alternative but the continued construction of huge costly fighting machines which constant improvements make obsolete within a few years. Fleets of battleships, armored cruisers, and less protected, but faster, cruisers must be supplemented by heavily armored coast defense vessels, by marvelously swift torpedo boats and torpedo-boat destroyers, by submarines and other modern warships. The new American navy has been in existence less than thirty years, but it is second only to that of Great Britain in fighting strength, excelling foreign navies especially in the superiority of the American seaman and gunner.

Buehler,  
W. H., in  
*Annals*  
*Am. Acad.*  
*Pol. Sci.*,  
26 (1905),  
163-169.

<sup>1</sup> The construction of an interoceanic canal (§ 234) has been undertaken almost as much for the interest of naval protection as for the sake of commerce. The long trip of the *Oregon* in 1898 around Cape Horn did much to crystallize sentiment in favor of a canal, whose usefulness at that time would have been very great.



A BATTLESHIP, THE KANSAS



A CRUISER, THE OLYMPIA





The vessels of the navy are assigned to different squadrons under the personal charge of vice admirals. The general direction of all naval affairs, plans for the coöperation of the different squadrons and the suggestion of improvements in naval administration, are given to the Secretary of the Navy, aided by the Admiral and a General Board.

Adminis-  
tration of  
the navy.

To facilitate the movements of the vessels of the navy, *naval stations* have been established at various places with intermediate coaling stations. A hundred million dollars have been spent for the construction of *docks* and *navy yards*, the latter being now equipped for building war vessels, including battleships. In 1845 a *naval academy* was founded at *Annapolis*, Maryland, for the training of officers. As with the military cadets, the midshipmen are appointed by the representatives, senators, or the President, the latter being allowed to name fifteen from the country at large. The course includes four years at the academy and two years of active service at sea. Training ships are also maintained at various places, and a Naval War College gives instruction at Washington.

Stations,  
yards, and  
academy.

Long, J. D.,  
in *Outlook*,  
73 (1903),  
330-337.

**241. Coast Defense.** — In theory, at least, our preparation for war has been undertaken with a view to avoiding future conflicts. This has made it especially necessary to defend our coast, because of the great value of the property that might be destroyed by war vessels. At all important seaports, some forms of coast defense are provided. The most important of these are the *coast defense vessels*, usually heavily armored monitors or floating batteries, and the land *batteries*, composed of large mortars and very powerful guns, often mounted on disappearing carriages. The channels are well guarded by *torpedoes* or submarine *mines*, controlled by electricity from the nearest fort or battery. Although many harbors are totally undefended, or so inadequately that a fleet could reduce the defenses without difficulty, there is little danger that, with our modern equipment, any foe could approach within striking distance of our great cities without probability of almost total destruction.

Land and  
water pro-  
tection.

Hill, G. G.,  
in *No. Am.*  
*Rev.*, 186  
(1907),  
554-564.

**242. Pension Legislation.** — Control of military affairs demands not only preparation for future wars, but reparation for past conflicts. National honor requires that the families of those soldiers who gave their lives for their country in

Need. Pres-  
ent laws.

Glasson,  
W. H., in  
*Annals*  
*Am. Acad.*  
*Pol. Sci.*,  
19 (1902),  
204-226.

the time of its extremity shall not be left to suffer for want of the necessities of existence. Congress has, in fact, done much more. Any soldier or seaman who enlisted in the Civil War, and who is now unable to earn a livelihood, may receive a monthly pension from the government. Old-age pensions are also given to soldiers irrespective of their disability. Numerous soldiers' homes, besides special sanatoriums, are provided for aged or invalid veterans. Such a liberal policy is in keeping with the large-heartedness of the American Nation, but it is a policy the administration of which opens the way to many abuses.

Two periods  
(historical).

The pension policy of the United States has passed through two periods of changes. Before 1890, only those who had been actually disabled in service, or who had been left destitute by the death in war of the wage earner of the family, received pensions. Since 1890, any soldier who suffered the loss of even a finger in battle, or has since become unable to provide for himself, can be placed on the pension list. By the law of 1907 pensions of \$12 or more are given to all old soldiers over sixty-two years of age, increasing to \$20 at seventy-five years. In 1882 there were but 285,697 persons receiving \$54,296,281. In 1907, the number had risen to 967,371, and the expenditures to \$138,030,894.22.

### General References

Hart, *Actual Government*, pp. 430-480.

Curtis, *The United States and Foreign Powers*.

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Schuyler, *American Diplomacy*.

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*North American Review*, 172 (1901), 381-393; 173 (1901), 102-133.

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### Questions

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2. Name any recent treaties of importance. Were they ratified at once by the Senate?
3. Name at least four representatives of the United States at foreign courts. Name two foreign ambassadors at Washington. Give some account of at least two of these men. Are there any consuls of foreign powers in the city in which we live?
4. What practical difficulties are encountered in concluding reciprocity treaties? With what important nations have we had reciprocity treaties during the last twenty years?
5. How much was spent last year in the improvement of rivers and harbors? Were any of the improvements of direct benefit to the section in which we live?
6. Look up the number of vessels of each class in the navy. Compare the navy with that of Germany; with that of Japan. What is the difference between a battleship and a cruiser?

## CHAPTER XIX

### NATIONAL FINANCE

#### NATIONAL TAXES

**243. The National Tax System.**—The financial powers conferred upon Congress by the Constitution are very extensive. In order that the national government may meet its expenses, Congress has the right “to lay and collect taxes, duties, imposts, and excises,” provided that “all duties, imposts, and excises shall be uniform throughout the United States,” and “to borrow money on the credit of the United States.” Under the Confederation, Congress had been dependent on the States for its revenue, but since the adoption of the Constitution, Congress has been independent of the States in financial as in other matters, and the powers granted by the Constitution have enabled our national government to accomplish the tasks which the central authority of every nation must assume.

Financial powers of Congress.

*Constitution*, Art. I, § 8, cls. 1, 2.

Hinsdale, *Am. Gov't*, §§ 341-352.

A casual examination of national expenditures shows us that in times of peace much more than *one half* of the money paid out by the United States government is for the army and navy, or for pensions and interest on the public debt. This proportion is, of course, greatly increased in time of *war*. It is therefore necessary that the national tax system be capable of considerable expansion during crises, although part of the revenue required for war expenses must be obtained through loans.

Financial needs of national government.

Bullock (ed.), *Readings in Pub. Finance*, 33-49.

The financial needs of the government have been met in different ways since the adoption of the Constitution. We may distinguish *three periods* in the history of national tax-

History of national taxation.

Howe,  
*Internal  
Revenue  
System*, 1-8.

ation.<sup>1</sup> The first of these was brief, lasting from 1789 to 1802. Various forms of customs, duties, and internal revenue were tried, in addition to direct taxes on land, houses, and slaves. The second period, from 1802 to 1861, was marked by an almost exclusive dependence upon duties, except during the second war with England. The third dates from 1862, when permanent internal revenue taxes were created, and temporary taxes upon incomes and manufacturing were used.<sup>2</sup>

Free and  
dutiable  
goods.

Conant, C.  
A., in *Rev.  
of Revs.*,  
16 (1897),  
167-174.

**244. Duties on Imported Goods.**—A little more than 50 per cent of the articles brought into the United States from other countries are dutiable.<sup>3</sup> On many articles, imported even in large quantities, no duty is paid at the port of entry, these being placed upon the "free list." Most of the imports subject to duty are manufactured products that come into competition with the productions of our American factories.<sup>4</sup> Upon these goods the rates vary widely, sometimes being as low as 25 per cent of what they cost abroad, as with common earthenware, and again, as with worsted yarns, being as high as 140 per cent of their original purchase price.

Merits and  
demerits of  
customs.

The chief *advantage* of custom duties is that the tax is not felt by the person who eventually pays it, for the im-

<sup>1</sup> These periods correspond to the periods of political dominance by different parties. The Federalists controlled the financial policy of the national government until 1801. From that time until the Civil War the party which at first was called Republican and afterward Democratic was supreme. Since 1861 the policy has been that practically of the present Republican party.

<sup>2</sup> The net *expenditures* of the government for the fiscal year ending June 30, 1907, were \$578,360,592, of which more than 363 millions was for the army, navy, pensions, and public debt.

The *revenue* for the same year from customs was \$333,230,126 and from internal revenue \$270,309,388. For the period from 1789 to 1907, the receipts from customs amounted to \$10,338,196,831 and from internal revenue to \$7,544,014,084, in a total of \$20,141,734,986.

<sup>3</sup> The rates upon imported goods are either *ad valorem*, i.e. according to the value, or *specific*, dependent upon weight or bulk. Fierce controversies have been waged by the advocates of the two systems.

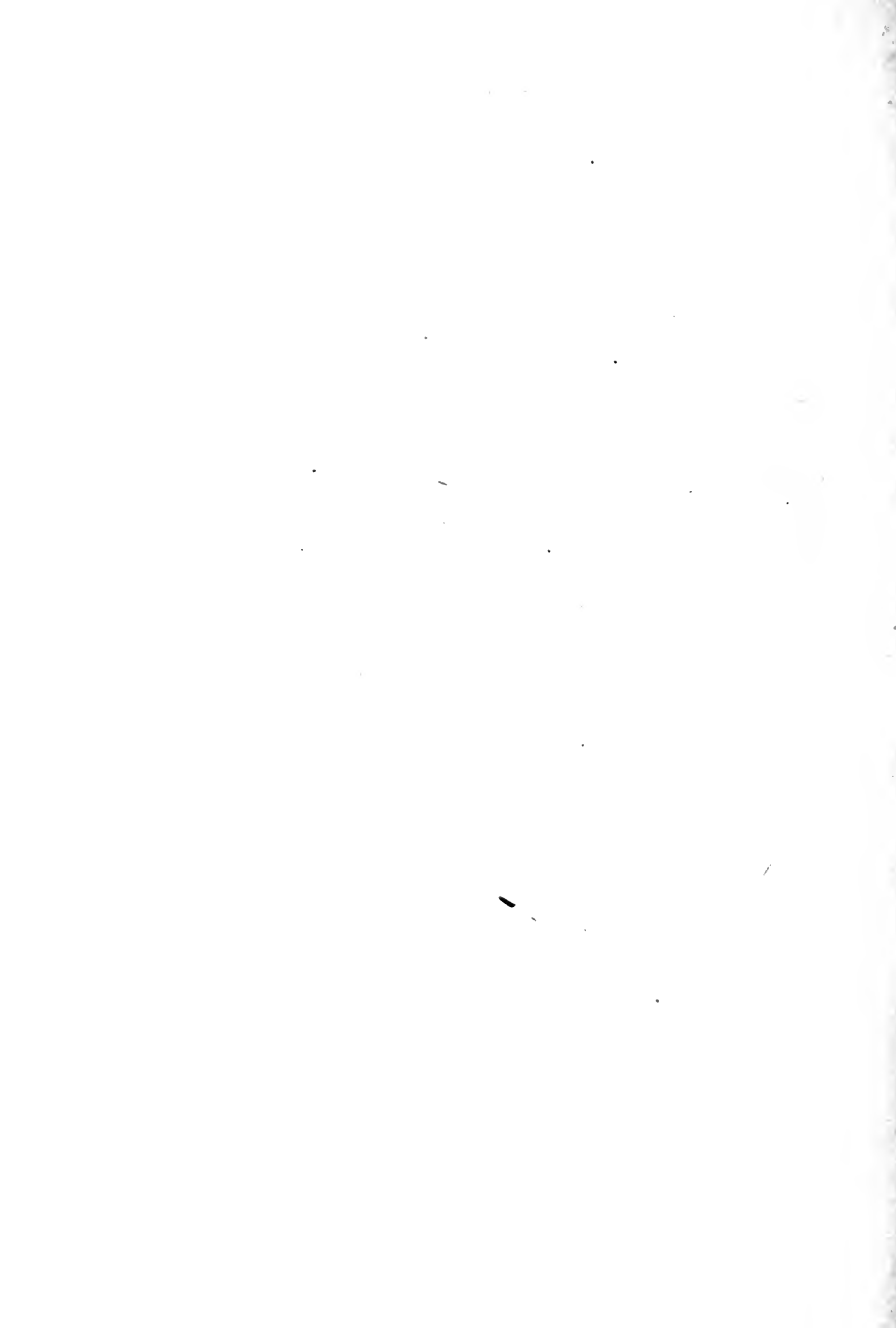
<sup>4</sup> On the value of a tariff to industry, see § 236.



CUSTOM HOUSE, CHARLESTON, S.C.



CUSTOM HOUSE, NEW YORK CITY





porter simply adds the amount of the tax to the cost of the goods, and the customer does not realize how much of a tax he has paid. Its chief *disadvantage* is that in times of prosperity, when national expenditures would naturally be light, the revenue from the tax is great, while in time of war, when expenditures are heavy, the imports of goods decrease visibly and the duties are correspondingly reduced.

The duties are collected at ports of entry in the borders of this country.<sup>1</sup> There is some smuggling, especially on the part of travelers who object to paying duty on articles purchased while abroad.<sup>2</sup> Importers sometimes seek to evade the customs laws by very greatly undervaluing their goods, but, if detected, are obliged to pay a heavy penalty.<sup>3</sup> Instances have occurred of connivance between importers and the appraisers of customs, resulting in enormous losses to the government, but fortunately these are quite rare.

**245. Internal Revenue.**—To-day the national government obtains as much money from internal taxes as from those upon foreign commerce. The rates are quite high, and the articles taxed at present include spirits, fermented liquors, and the different forms of tobacco. Our present internal revenue system is a heritage left us by the Civil War, dur-

Adams,  
*Finance*,  
467-473.

Plehn, *Public Finance*,  
182-191.

Collection  
and evasion  
of duties.

Davis, O. K.,  
in *Century*,  
68 (1904),  
55-64.

Little, L. B.,  
in *Cosmo-  
politan*,  
28 (1900),  
564-570.

Rates and  
history.

Hart, *Actual  
Gov't*, § 178.

<sup>1</sup> There are one hundred and twenty-four ports of entry, which are in charge of collectors of customs, assisted by over 5,000 persons.

<sup>2</sup> Travelers returning from abroad are allowed to bring back one hundred dollars' worth of clothing purchased in other countries, but must pay duty upon everything else.

<sup>3</sup> When an importer purchases goods abroad, he makes out three invoices, or bills of goods. One of these he ships with the goods, one is left at the consulate nearest the place of purchase, and the third is sent by the consul to the port at which the goods are to be entered. Incoming vessels are met by revenue officers, who take charge of the cargo. After the vessel has been "entered," the invoices of goods are compared with those sent from abroad, a part of the articles being examined by appraisers to ascertain whether they correspond in number and quality with those described in the invoices. The assessment is determined by the appraiser, and the collection of duties then performed by assistant collectors. The consuls ascertain so far as they are able whether the goods actually cost the amounts named in the invoices, but this is almost impossible. The government relies more upon secret service agents in Europe and at the chief ports to ferret out cases of extreme undervaluation of goods.

Bullock  
(ed.), *Read-  
ings in Pub.  
Finance*,  
455-462.

ing which it was devised in the attempt to meet the extraordinary expenditures involved in maintaining a large navy and an army of over a million men. The War of 1812 also produced internal taxes, but they were short-lived, owing to the feeling of the people against them.

Value of  
the tax  
during wars.

The ease with which the revenue from this tax can be increased is quite apparent in the financial history of the Civil and Spanish-American wars. At the beginning of the Civil War the national government was levying no internal taxes, but in 1862 Congress authorized the taxation not only of *spirits, malt liquors, and tobacco*, but of *manufactures and incomes*, as well as levying a stamp tax on *ordinary business transactions*. Later in the war, new schedules were added to these taxes, and the rates were increased on the articles formerly taxed. A process somewhat similar, although less extensive, was followed during the Spanish-American War.

Plehn, *Pub-  
lic Finance*,  
169-175.

Bullock  
(ed.), *Read-  
ings in Pub.  
Finance*,  
449-455,  
462-472.

Importance  
in time  
of peace.

The tax on liquors and tobacco is a valuable one at all times, since those who use those luxuries can afford easily to pay a share of the expenses of the general government. The *extensibility of internal taxes* in times of great financial need is undoubtedly its most desirable feature, as industry is apt to be stimulated rather than retarded by war. To levy a very heavy tax on industry may, however, seriously cripple business and handicap the Nation in its prosecution of the war, so that excessive taxation must be avoided, especially as it leads to a great amount of fraud.<sup>1</sup>

Adams,  
*Finance*,  
496-498.

Operation  
and objec-  
tions.

**246. Income Taxes.**— Although income taxes are not levied at present by our national government, their use during the period of the Civil War and their extensive use by the most progressive foreign governments make the subject one of considerable interest and importance. *Theoretically* the tax meets the requirements of a very satisfactory tax (§ 148), since net income is the best evidence of ability to

Plehn, *Pub-  
lic Finance*,  
232-239.

<sup>1</sup> On the whisky tax of the Civil War, see Dewey, *Financial History of United States*, § 166.

pay taxes. This is especially true when small incomes are exempt, since persons with small incomes expend all their money on necessities. The tax is *objectionable*, because it requires investigation into the private affairs of individuals, and, by placing a premium on misstatement of incomes, leads to a large amount of fraud. The chief objection in this country has come from the constitutional standpoint, since the Supreme Court holds that an income tax is a direct tax that must be levied on the States according to their population — a condition that makes the use of an income tax impossible.

Adams,  
*Finance*,  
477-488.

During the Civil War, taxes were levied by the national government upon incomes. At one time persons with incomes between \$600 and \$5000 paid a 5 per cent tax, and those over \$5000, 10 per cent. In 1894 an attempt was made to levy a similar tax, exempting those whose incomes amounted to less than \$4000 annually. This was opposed as class legislation, as a much heavier burden would be placed on the capitalists of the East than any others.

Historical.

Bullock  
(ed.), *Read-  
ings in Pub.  
Finance*,  
280-289.

**247. Miscellaneous National Taxes.**—It was supposed when the Constitution was adopted that a large part of the revenue of the United States government would come from *direct taxes* levied upon the States in proportion to their population, but Congress had not seen fit to gain money by this means except five times, four of which were during the wars of 1812 and of 1861.<sup>1</sup> Unlike the taxes upon imports or manufactures, Congress does not decide what the rate shall be, but ascertains the total amount of the tax, *apportioning* to each State its share.

Direct  
taxes.

Howe,  
*Internal  
Rev. Sys-  
tem*, 82-90.

Bullock  
(ed.), *Read-  
ings in Pub.  
Finance*,  
299-306.

A minor source of revenue has been the tax upon *legacies*, which was used from 1898 to 1902. Persons who inherited at least \$10,000 were obliged to pay three fourths of 1 per cent of the amount if closely related to the deceased, or as high as 15 per cent of the bequest, if not related in

Inheritance  
tax.

Howe,  
*Internal  
Rev.  
System*,  
114-120.

<sup>1</sup> Whenever direct taxes have been levied on the States, they have been paid grudgingly and tardily.

any way, and the amount left was over \$1,000,000. This is *progressive* taxation, which was considered earlier (155). A similar inheritance tax has been proposed in connection with the Payne tariff (1909) (p. 236).

The burden  
of national  
taxation.

Wright,  
C. D., in  
*Century*,  
61 (1901),  
433-437.

The total revenue from all forms of taxation for the fiscal year 1906-1907 amounted to more than \$600,000,000, 55 per cent of which came from customs and the remainder from internal revenue on liquors and tobacco. Although these taxes were paid by those who used the articles taxed, this burden of more than \$7 per capita, or about \$36 for each family of five, was borne chiefly by the workers of the Nation, men with small incomes.

#### MANAGEMENT OF NATIONAL FINANCES

The sources  
of revenue.

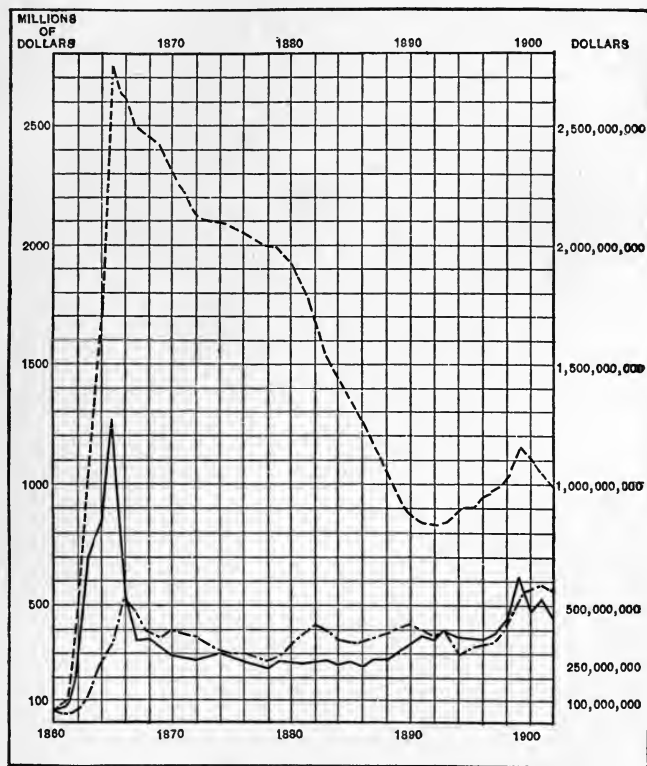
**248. Revenue and Expenditure.**—In national finance the raising of revenue depends, to a large extent, on the expenditure. A nation is not like an individual whose expenses depend upon his income. It has certain governmental duties to perform, and in performing them it thinks first of carrying on its work, and second of raising the money to do it. In other words, *expenditure determines the income*. If the expense is unavoidable, and the revenue is not forthcoming, the government sooner or later goes to pieces. In modern States the question is not whether the money can be obtained, but by what means. In the United States we have derived the greatest part of our revenue from duties on imports. Under Federalist rule, and since 1861, internal revenue has been very important. The public lands have yielded some, while temporary income and direct taxes have been used. Practically every cent brought into the treasury has been by indirect taxes, levied almost as much in the interest of industrial development as for the sake of revenue.

Rapid  
growth of  
expendi-  
tures.

All of these indirect sources are liable to great fluctuations, especially in time of war or panic, but so great has been the industrial development of the country that the rev-

venues have increased with marvelous rapidity. It is a fact of common observation that democracies are extravagant. In the case of the national government this *extravagance*

Bullock (ed.), *Readings in Pub. Finance*, 39-49.



NATIONAL REVENUE, EXPENDITURES AND DEBT (1860-1902)

Revenue - - - - - Expenditures ——— Debt . . . . .

has been fostered by the frequent large surplus of revenue and by the failure to make any one responsible for the expenditure of any particular sum or for the total appropriations of Congress. Only a few years ago protests were heard

Walker, E. G., in *Rev. of Revs.*, 38 (1908), 67-71.

over the wild extravagance of a billion-dollar Congress, but 1908 was signalized by the advent of the billion-dollar session.

Financial  
committees  
of the  
House.

Adams,  
*Science of  
Finance*,  
123-132.

Plehn, *Pub-  
lic Finance*,  
330-334.

Revenue  
bills in  
House and  
Senate.

Wilson,  
*Cong. Gov't*,  
III.

Influence of  
Secretary  
of Treasury.

**249. Revenue Bills.**—The division of responsibility in financial matters may be shown by examining the machinery of a single house—the House of Representatives—which has special financial powers, since all bills for *raising* revenue must be proposed by it, although they may be amended by the Senate the same as other bills. To care for this part of its work, the House has a rather complicated arrangement of committees, which includes a Committee on Ways and Means, to which all revenue bills are referred, and over a dozen committees on appropriations, which consider different phases of the government's expenditures. When the House wishes to debate any measure which deals with finance, it resolves itself into a "Committee of the Whole House on the State of the Union."

The influence exercised by the Committee on Ways and Means is indicated by the fact that tariffs are known popularly by the name of the chairman of that committee, as, *e.g.*, the McKinley tariff of 1890, or the Dingley tariff of 1897. But, although the Committee on Ways and Means ordinarily places an indelible stamp upon each revenue measure, the original bill is often very different from the one that is enacted into law, for the House in the Committee of the Whole may not approve the work of its committee and consequently favor numerous alterations, while the Senate is sure to make many changes which no conference committee can induce it to drop. In 1894 the bill reported by Chairman Wilson, proposing a tariff for revenue only, was so changed in the Senate that the tariff was not known as the Wilson tariff, but as the Gorman-Wilson tariff.

Many of the bills introduced in the House by the Committee on Ways and Means have been greatly influenced by the suggestions of the President, or the Secretary of the Treasury. This was especially true during Washington's

administrations, when Alexander Hamilton was in charge of the Treasury portfolio.

**250. Appropriation Bills.**—Every regular session of Congress brings with it general appropriation bills, and many special bills dealing with the expenditures upon rivers and harbors, the army, the navy, and other subjects. At the present time fourteen committees have charge of the different bills upon expenditures. As they are not obliged to work together, and do not make a special effort to have the appropriations equal the government's income, there is either a considerable surplus or a large deficit shown on the Nation's balance sheet. The President has very little control over appropriation bills, because he must accept or reject them as a whole, since he does not have the power conferred on most of the state governors (§ 95) of vetoing particular items.

Number of appropriations committees.

McConachie,  
*Cong. Committees*,  
181-186.

Wilson,  
*Cong. Gov't*,  
163-169.

It is customary for the Secretary of the Treasury to have the chief officials of the Treasury and other departments make, in the fall of each year, *estimates* of the amount of money needed for the year beginning the first of the following July. These estimates are bound together, and sent with the Secretary's report to Congress when it meets. These estimates are assigned to the proper committees, and are usually the bases of the committees' reports, but the committees are not bound by the estimates of the executive departments. When a *bill* making appropriations is reported to the House, that body considers it in Committee of the Whole on the State of the Union. In times past this consideration has been careful and thorough, but with the multiplication of appropriation bills the House has given less attention to the subject. It might be stated that the committees usually recommend a much smaller amount than that asked in the estimate. In the Senate an appropriation is likely to be increased, and, finally, when the conference committee reports, it is probably the close of the session, and the conference bill is passed without much debate on its merits.

Treasury estimates.

Appropriation bills in Congress.

**251. Borrowing Money by issuing Bonds.**—At all times when government expenses are not met by the ordinary receipts,—and these times always come in war and sometimes during peace, especially during a business depression,

Amount and rate of interest.

Adams,  
*Finance*,  
547-553.

— it is necessary for the government to borrow money. This is usually done by issuing bonds that bear a certain rate of interest and are payable in twenty or thirty years. These bonds are sold publicly to the highest bidders. During the Civil War, bonds to the value of several thousand million dollars were sold, often with great difficulty. Most of these bonds bore six per cent interest and were payable after five or ten years. At present the public debt of the United States includes nearly a billion dollars' worth of bonds payable twenty or thirty years from date of issue. Of these over three fourths are at two per cent. As the three, four, and five per cent bonds are far above par, that is, sell for much more than their face value, we can easily perceive that the credit of our national government is excellent; in fact, no government in the world is able to obtain a lower rate of interest or finds its bonds in greater demand.

Real nature  
of national  
debt.

Bullock  
(ed.), *Pub.*  
*Finance*,  
499-503.

Adams,  
*Finance*,  
555-564.

Greenbacks.

Many people advocate a national debt as a "public blessing," but the ablest financiers deplore the increase of public debt except for necessary investments or in time of crisis. When, as in the case of the United States, the revenues have usually exceeded the expenditures, a debt is not serious. None of the other great nations have a per capita debt smaller than that of the United States, for our national indebtedness is less than \$15 for each inhabitant.

Dewey,  
*Finan.*  
*Hist. of U.S.*,  
§§ 122-125.

**252. Borrowing Money by issuing Treasury Notes.**—If we take the pains to examine a \$5 "greenback," we shall see that it is a promise on the part of the United States to pay the holder \$5. It is in reality a *note*, issued by the Treasury Department instead of by an individual, but which circulates as money. These notes were issued first during the Civil War, when the government experienced considerable difficulty in obtaining revenue and in selling bonds. They were made a *legal tender*; that is, no person could refuse to accept them in payment of a *debt* unless his contract called for payment in a certain kind of money. By using them, the United States borrowed nearly \$450,000,000 dur-



ing the War of Secession. After the war, many people thought that the greenbacks should be retired because the Constitution does not give Congress the right to issue paper money, but the Supreme Court decided first that Congress might issue greenbacks in time of *war*, and later stated that they might be issued in time of peace, also. Consequently, only part of the Civil War issues were retired, and the government is still in debt to those persons who still hold greenbacks, to the amount of more than \$200,000,000.

The continental currency issued during the Revolutionary War was in the form of treasury notes. As the credit of the government was poor, they became almost valueless, so that the expression "not worth a continental," passed into a proverb. During the Civil War, the issues of treasury notes were so large that a greenback was worth much less than a gold coin of the same denomination, and at one time a dollar in gold would purchase as much as \$2.85 in paper.

Continental  
currency.

Dewey,  
*Finan.*  
*Hist.*,  
§§ 15-17.

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Hart, *Actual Government*, pp. 394-429.

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### Questions

1. Name the articles from which most of our customs duties is now derived. (Newspaper almanacs.)
2. Have we a national tax now on any commercial transactions? To what taxes is the progressive principle applied?
3. Make a table showing the revenue derived from each source during the last fiscal year. Do the same for the expenditures. Does the proportion of any items seem unjust?
4. What serious defects are noted in the methods used by Congress in the control of finance?

## CHAPTER XX

### REGULATIONS AFFECTING INTERNAL COMMERCE

**253. Extent of Commercial Powers.**—In addition to the control of foreign commerce (§§ 232–236), the national government has charge of *interstate commerce*, makes bankruptcy laws,<sup>1</sup> and provides a *uniform system of currency* for the transaction of business. Not only does Congress have the right to “coin money,” regulate the value thereof, and punish persons who counterfeit the currency, but the States are expressly forbidden to “coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts.” The currency of the country may be used as a means for raising revenue (§ 252) or assisting the government in its operations, but its fundamental purpose is to aid in the exchange of goods from one person to another.

Commercial powers of Congress.

*Constitution*, Art. I, § 8, cls. 3, 5, 6; § 10, cl. 1.

In order that people doing business may have a currency upon which they can rely, the whole subject of money is left to the charge of government, with the idea of obtaining the best results for all concerned. The government must

Need of a uniform currency.

<sup>1</sup> Although Congress has power under the Constitution to make bankruptcy laws, only four had been passed since 1787, no one of which was in force more than eleven years. The States, meanwhile, were permitted to pass insolvent laws which could apply only to debts incurred after the law was passed and to debts owed by a citizen of one State to a citizen of the same State. National bankruptcy laws, on the contrary, absolve a debtor from all legal obligation to pay any of his debts, past as well as future, upon division of his property among his creditors.

The present law, passed in 1898, makes a distinction between voluntary bankrupts and involuntary bankrupts. Any person in debt, except a corporation, may voluntarily become a bankrupt unless he has failed within the six years preceding. Any persons, except laborers, farmers, and national banks, who owe \$1000 or more, may be tried in a district court of the United States and adjudged bankrupts.

decide first *what metals* shall be used in making coins. If the government decides to make coins of both gold and silver, as is done by most nations, there is a very important question to be settled regarding the *amount* of gold or silver to be used in coins of the same value.

### OUR MONEY SYSTEM

Bimetal-  
lism.

Gide,  
*Political  
Economy*,  
237-250.

**254. Money Standards.**—If the government wishes to give the people both gold and silver coins, it follows *one of two policies*. (1) It allows any one who has gold or silver bullion to bring it to the mint and have it made into coins. This is called *free coinage* of both gold and silver, and is known as *bimetallism*. It must be obvious that under a bimetallic system *both* metals will be coined only in case the gold and silver coins of the same denomination are of the same *real* value. For example, if the government says that the gold dollar shall contain 23.22 grains of gold and the silver dollar 371¼ grains of silver, while the 23.22 are worth as much as 500 grains of silver in the *market*, then no one will take 23.22 grains of gold to the mint and receive only one gold dollar in return, when he can trade his gold for 500 grains of silver and then exchange the 500 grains of silver at the mint for \$1.35 in government silver coins.

Market  
ratio and  
legal ratio.

Seligman,  
*Prin. of  
Economics*,  
§§ 202, 203.

If an ounce of gold is worth as much as 30 ounces of silver, the *market ratio* of the two metals is said to be 30 to 1. This ratio varies constantly, because gold and silver, like other commodities that are bought and sold, change in value. When a government permits free coinage of *two* metals, it must fix the amount of metal of each in coins of the same denomination. It must therefore have a *legal ratio* between the two. For example, if the silver dollar contains 15 times as much pure metal as the gold dollar, the legal ratio is 15 to 1.

Mono-  
metallism.

(2) The *second method* which a government may adopt is to allow only *one* metal to be brought to the mint for coin-

age to an *unlimited* amount. The government then buys the other metal and coins it into money. If there is free coinage of gold only, and the government buys silver to make into coins, then the silver in a silver dollar must be of *less* value than the gold in a gold dollar, otherwise the silver dollars will be traded for gold *bullion* and the bullion brought to the mint for free coinage. But if the silver of the silver dollar is worth less than 100 cents in gold, let us say 78 cents, then the *credit* of the government must be good for the other 22 cents if the gold and silver coins are to circulate side by side. This system of free or unlimited coinage of *one* metal only is known as *monometallism*.

Government coinage of a second metal.

Bullock, *Economics*, 303-313.

**255. History of the American Coinage.**— Fortunately for us, Congress, even under the Confederation, adopted a decimal system of coinage, the Spanish dollar being the “monetary unit.” In 1792, on the recommendation of Alexander Hamilton, Secretary of the Treasury, the weight of the silver dollar was fixed at  $371\frac{1}{4}$  grains of pure silver and of the gold dollar at  $24\frac{3}{4}$  grains of gold, a legal ratio of 15 to 1, with alloy added to make the coins hard and durable. Any one who had those amounts of gold or silver bullion was allowed to take them to the mint and have them coined for his own use. Forty two years later it was found necessary to reduce the weight of the gold dollar to 23.22 grains fine, as the old gold dollar was worth more in the form of *bullion* than as a coin, so the gold dollars went out of circulation and the people did all of their business with silver. After this change had been made in 1834, however, people found that the silver dollars were now worth more as bullion than as coins, so that those who had silver did not go to the mint with it, but took only gold, and silver almost disappeared from circulation.<sup>1</sup>

Laws of 1792 and 1834.

Dewey, *Finan. Hist. of U.S.*, §§ 44, 90.

In 1873, Congress decided that there should be no longer

Laws of 1873, 1878, and 1890.

<sup>1</sup>In 1854, in order to provide business men with small change, the government reduced the amount of silver in the 50-cent piece and smaller coins. As it could not allow free coinage of these lesser coins, it bought the silver and minted the coins.

Dewey,  
*Finan.*  
*Hist.*, §§ 170,  
173, 186.

Law of 1900.

Dewey,  
*Finan.*  
*Hist.*, § 198.

Work at  
the mints.

Benjamin,  
M., in *Scien-  
tific Am.*,  
85 (1901),  
145, 154-155.

Yale, C. G.,  
in *Overland*  
*Monthly*,  
36 (1900),  
558-578.

Regular and  
emergency  
circulation.

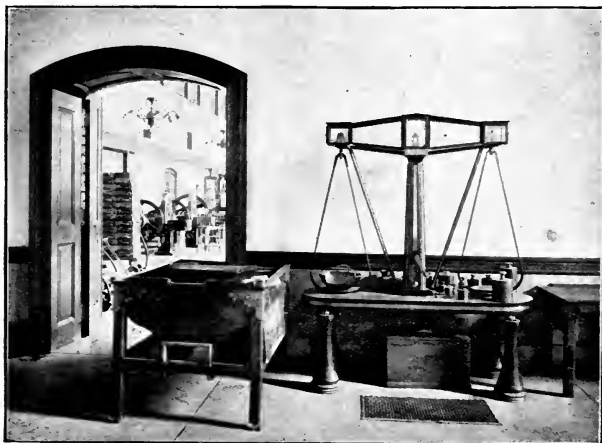
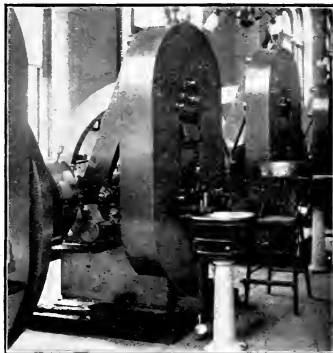
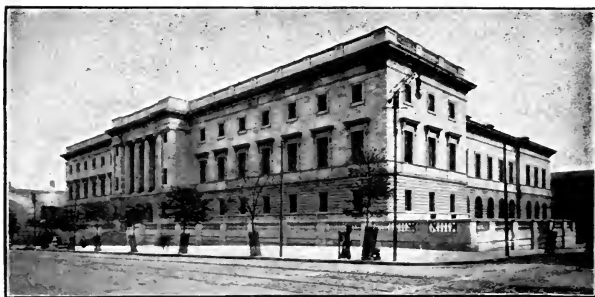
“free coinage” of silver dollars. Later, however, in 1878 and 1890, in response to a demand for silver dollars, Congress passed laws authorizing the Secretary of the Treasury to *buy* silver bullion, and have it coined into dollars. This was a very different matter, of course, from free coinage of silver, for we now had a monometallic standard as explained in the preceding section. The later law was repealed in 1893 during the panic of that year, and in 1900 the gold dollar was made the money unit for the United States. Every silver dollar in circulation, the silver of which is actually worth about a half of the gold in a gold dollar, is guaranteed to be of equal value with gold.

**256. The Process of making Coins.**—The different coins in use in the United States are coined at the mints operated by the government.<sup>1</sup> The gold or silver is first refined so as to be absolutely pure, and is then mixed with alloy to make it hard. This mixture is molded into bars about a foot long, which are rolled repeatedly until they become strips of several feet in length and of the required thickness for the various coins. These strips are fed into a cutting machine which cuts the disks or planchets of suitable sizes for the different coins. The planchets are first placed in the milling machine in order to raise the edges so as to prevent wear upon the face of the completed coin, and are then taken to the coining machine in which dies are pressed against the planchets simultaneously from above and below.<sup>2</sup>

**257. National Bank Notes.**—Besides the gold coins which any one can have struck for him at the mints by taking the proper amount of gold bullion, and the silver coins made by the government from silver which it has bought outright, we use in business several kinds of paper money. One of

<sup>1</sup>There are three mints—at Philadelphia, San Francisco, and Denver.

<sup>2</sup>In the counting room, the more valuable coins are counted by weight, and the minor coins are counted by filling the grooves of boards which will contain a certain number and no more (see apparatus at left of view on opposite page). The greatest care is taken to see that every important coin weighs exactly what it should, and the planchets are tested for that purpose. All of the minor coins are made at the Philadelphia mint from materials furnished by a private company.

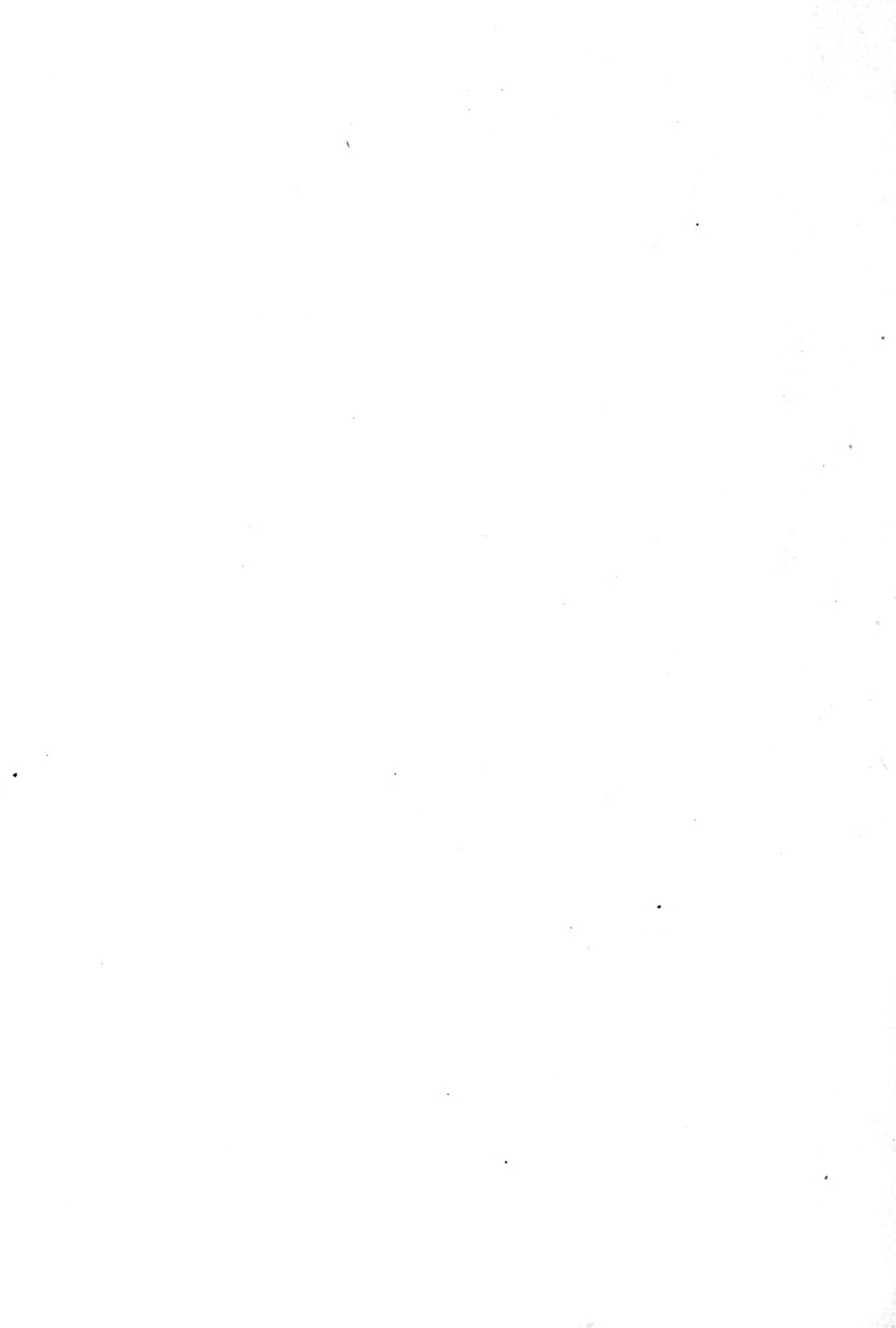


WHERE COINS ARE MADE

A Milling Machine.

The Mint, Philadelphia, Pa.  
The Counting Room.

A Coining Machine.





them consists of the *bank notes* issued by banks<sup>1</sup> which receive their charters from the national government. (1) These banks are allowed to issue *regular* notes equal in value to United States bonds which they have bought and left with the Treasurer of the United States. (2) The government permits national banks to issue notes *temporarily*<sup>2</sup> by paying a tax of 5 per cent, increasing 1 per cent a month to 10 per cent, in order to insure the retirement of these notes after the special need is past. The total amount of this emergency circulation is \$500,000,000, distributed among different sections of the country. The notes may be issued to 90 per cent of the value of approved state, city, or county bonds, or to 75 per cent of the value of commercial paper accepted by an association of ten local banks. This emergency circulation, permitted until 1914, gives some elasticity to a very inelastic form of bank notes. As the government agrees to accept all these notes except in the payment of duties, for which gold alone is taken, and as the banks must redeem them in lawful money upon demand, they circulate readily, although they are not legal tender, and people are not obliged to accept them in the payment of individual debts.

Our present national banking system was established in 1863 for the purpose of creating a new market for bonds which the government was obliged to sell. The national bank notes soon replaced the notes of state banks which were then in circulation, for Congress placed an annual tax of 10 per cent upon the issues of the state banks. During each industrial panic there has arisen demand for a *reform* of our national banking system. The only relief given by Congress has been through the emergency circulation act just described. Reform of the system has been postponed indefinitely. Many people oppose the issuance of any form of currency by a private corporation, holding that the gov-

Dewey,  
*Finan.*  
*Hist.*,  
§§ 139, 200.

Seligman,  
*Prin. of*  
*Economics*,  
§ 221.

History and  
criticism.

Dewey,  
*Finan.*  
*Hist.*, §§ 138,  
163, 164.

Seligman,  
*Prin. of*  
*Economics*,  
§ 224.

<sup>1</sup> The national bank notes are printed by the government at the bureau of engraving and printing, the notes being distributed to the banks for the signature of bank officials.

<sup>2</sup> Aldrich-Vreeland Act of 1908.

ernment should issue large quantities of treasury notes which would furnish us a cheap and adequate circulating medium.

Substitutes  
for coin.

Gordon,  
*Congressional  
Currency*,  
173-183.

**258. Gold and Silver Certificates.**—As it is much easier to handle a five-dollar bill than five silver dollars, it has become customary for the government to deposit the silver dollars in government vaults and issue in place of them silver certificates of one, two, five, and ten dollars. These are not legal tender, but the government is willing to exchange the silver for them at any time, and to give gold in exchange for the silver, so that a silver certificate for five dollars is worth as much as a five-dollar gold piece. Gold certificates are likewise issued in denominations from \$20 to \$10,000; but, as we should naturally expect, the amount of gold in circulation is three times as great as that of the gold certificates, whereas five sixths of all the silver in the United States is piled away in sacks in Washington or at the subtreasuries.

Real value  
of paper  
money.

Bullock,  
*Economics*,  
264-269.

Seligman,  
*Economics*,  
§ 207.

The three kinds of paper money—the treasury notes (§ 252), the bank notes, and the certificates—are alike in size and general appearance. The certificates are really substitutes for the coin they replace, although they possess no intrinsic value, but the others depend for their value entirely on the credit of the government or the banks.

## INTERSTATE COMMERCE

Commerce  
by water.

Hart, *Actual  
Gov't*,  
§§ 223, 224.

**259. National Aid to Interstate Commerce.**—Interstate commerce<sup>1</sup> is much more important than our foreign commerce, because it involves a vastly greater volume of trade. Until about a third of a century ago, our governments believed it their sole duty to aid this inland commerce by opening territories hitherto inaccessible, and by improving roads and waterways over which interstate trade might be

<sup>1</sup> For an explanation of what is included under interstate commerce, consult Hart, *Actual Government*, p. 507, or Prentice, *Federal Power over Carriers and Corporations*, pp. 168-172.

carried on. Appropriations have been made for the deepening of river channels and the construction of interstate canals. The importance of this aid may be shown by citing a single instance — that of the Sault Ste. Marie Canal connecting Lakes Superior and Huron. This canal which contains a lock 800 feet long was completed in 1896 at a cost of \$5,000,000. Since that time the annual tonnage passing through the canal has risen to more than \$40,000,000 (1907), more than twice the tonnage entering New York harbor in any year.

As the country has been settled more fully, government aid to railways has been discontinued. In the two decades following 1850, however, the national government granted to railways, most of which were in the West, an area equal to that of the two Dakotas and Nebraska. Immense sums were also loaned by Congress during this period to the promoters of transcontinental railways.

An undertaking greater than any yet attempted by our national government, except the Panama Canal, is the proposed deep waterway from the Great Lakes to the Gulf of Mexico. By deepening the Mississippi and the present drainage canal from Chicago, with deeper channels for the tributary streams, freight rates would be lowered and an immense impetus given to commerce throughout the Middle West. The project, like the proposed ship canal from Lake Erie to the Hudson River, is one that will be completed probably by the coming generation.<sup>1</sup>

**260. Creation of an Interstate Commerce Commission.** — For nearly one hundred years Congress did not attempt to exercise its right to control interstate commerce except by the passage of a few minor laws. But with the development of trunk railways which did business in several States, regulation at length became unavoidable. During the period

Quick, J. H.,  
in *Putnam's*  
*Mo.*, 4  
(1908), 3-15.

Means of  
land com-  
munication.

Johnson,  
*Am. Rail-  
way Trans-  
portation*,  
311-319.

Proposed  
"Lake-to-  
Gulf" ship  
canal.

King, H.,  
in *World  
To-day*,  
13 (1907),  
897-901.

Need of  
railway  
control.

Johnson,  
*Am. Rail-  
way Trans-  
portation*,  
217-227.

<sup>1</sup> On inland waterways, consult *Annals of American Academy of Political Science*, T. Roosevelt et al., 31 (1908), 1-11, 48-66, 139-163. On Atlantic coast canals, see same, 31 (1908), 73-116.

Haines,  
*Railway  
Legislation*,  
205-221.

Seligman,  
*Prin. of  
Economics*,  
§§ 239, 240.

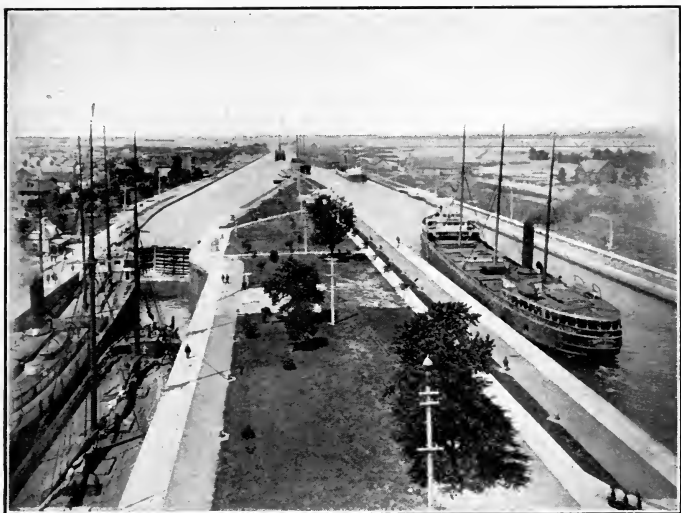
following the Civil War many unnecessary railways had been constructed. Each of these sought to pay expenses by charging *extortionate rates* between points that were dependent on their railway alone, since competition had lowered the rates between cities which were connected by more than one railway. As a consequence, the railways often charged more for a short distance than for a longer haul which included the short haul. Not only was there *discrimination according to distance*, but the railways frequently *discriminated between persons*, by giving some shippers rates much lower than the advertised schedule of charges. Usually this reduction was in the form of a *rebate* or amount returned to the shipper after the goods had been delivered by the railway. In order to maintain high rates by protecting themselves from competition on the one side and from the demands of the shippers for rebates on the other, the railways formed combinations called *pools*, in which the amount of business and profit of each railway in the "pool" was determined *in advance*. This removed any temptation to secure extra business by cutting rates.

Limitations  
of state  
control.

Several of the States created railway commissions (§ 140) to take charge of railway affairs within their own States. One of these commissions, that of Illinois, applied its laws to certain trade that was carried on between Illinois and the neighboring States, but the Supreme Court of the United States declared in 1886 that the *Illinois Commission had no right to regulate interstate commerce, as Congress alone had that power*. The next year Congress passed the Interstate Commerce Act to protect the public from the unjust actions of the railways.

Powers and  
methods.

**261. The First Interstate Commerce Commission**, created by the law of 1887, consisted of five members. The avowed purposes of the act were to abolish pools affecting interstate commerce and to prevent the railways from charging extortionate or discriminating rates. The commission could hold sessions, call witnesses, and examine railway accounts when-



SAULT STE. MARIE SHIP CANAL



Copyright by Clinedinst, Washington, 1908.

INTERSTATE COMMERCE COMMISSION



ever any complaint was made or it believed that the rates were unjust. It might declare rates *unreasonable* because they were extortionate or discriminating, but if the railway wished to disregard the decision of the commission, the latter was obliged to carry the case before the courts. The courts hindered the commission more than they aided it, for they permitted the railways to introduce *new* evidence which had not been presented to the commission, thus making the decision of the commission valueless because based on incomplete evidence. The courts also prevented the commission from naming rates that it considered reasonable, so that the railways could avoid punishment by lowering their rates a very small amount.

Although this commission did not succeed at all fully, it removed many of the old railway abuses. It gave publicity to railway management and accounts, it introduced a fairly uniform system of railway accounting, it prevented the railways from charging grossly unjust rates, and by its constant appeal for more power, aroused public interest so that a new commission was created with more power.

The commission's work was especially effective after 1903, when a supplementary law was passed, called the "Elkins Act." This made it illegal to *give* or *accept rebates*, made rebating punishable by fine, and permitted the commission to apply to the courts for injunctions which would prevent any railway from breaking any part of the interstate commerce laws.

**262. The Present Interstate Commerce Commission.**—After years of agitation, both houses of Congress agreed (1906) on a new Interstate Commerce Act which replaced that of 1887. The new commission, composed of seven members appointed by the President and Senate, has the power not only to declare rates "unreasonable" but to fix the *maximum rate* that shall be charged for the transportation of freight or passengers on interstate lines. It brings under the supervision of the commission all interstate *common*

Johnson,  
*Am. Rail-  
way Trans-  
portation*,  
370-376.

Successes  
and failures.

Johnson,  
*Am. Rail-  
way Trans-  
portation*,  
376-385.

Elkins Act  
(1903).

Johnson,  
*Am. Rail-  
way Trans-  
portation*,  
423-425.

Provisions  
of the law  
of 1906.

Prouty, C.  
A., in *Rev.  
of Revs.*,  
34 (1906),  
65-70.

*carriers*, a term which includes railways, private refrigerator cars, Pullman cars, express companies, and pipe lines (except for gas and water), in addition to interstate telephone and telegraph companies. No railway may carry, except for its own use, articles of which it is the owner, nor, if a railway reduces rates to meet water competition, may it restore water competition when the water competition has been removed.

Advantages  
in regard to  
railway  
rates.

Smalley,  
H. S., in  
*Annals*  
*Am. Acad.*  
*Pol. Sci.*,  
29 (1907),  
292-309.

Ripley (ed.)  
*Railway*  
*Problems*,  
540-556.

The problem to be solved by the commission is one of great difficulty, because the management of the great railways of to-day is exceedingly complicated and would tax the skill of the ablest economists and managers, even if our statesmen, railway magnates and managers, shippers, and the general public were always public-spirited and unselfish. The present commission can do much more than its predecessor, because it may supervise the classification of freight and can fix the maximum rate to be charged for transporting any class of freight between two points, although it cannot make all rates between those points just, nor can it insure reasonable rates everywhere for the transportation of similar commodities. Its decisions are effective because they go into effect without great delay, and the *companies* must sue the commission if they believe the rate fixed is too low. Under the old law the *commission* was obliged to secure the approval of the courts before its decisions were obeyed. There were no long delays as formerly, because *all* evidence must be presented to the commission, and the cases are considered at once by a special Court of Commerce of five Circuit Court judges. Giving or accepting rebates is punishable by fine or imprisonment. Passes can be given only to railway officials, to employees, or to persons engaged in religious or charitable work. Private car and pipe line monopolies may be broken up.

New provisions of  
the law of  
1906.

The additional requirements of the law of 1906 show a decided improvement. The private cars which were run on different railways, and which before 1906 charged extortionate rates with impunity, have been brought under



control. Pipe lines that were owned by a monopoly must now be used, as common carriers, on the same terms for outsiders as for the owners. The railways which had bought up most of the coal mines of Pennsylvania, thus securing a monopoly in producing and transporting that necessity in the East, are not able to raise prices as easily as they did. The present law is imperfect in many ways and cannot reach the real evils of many railway practices, but it marks a step in the final solution of national control.

**263. The Sherman Anti-Trust Law of 1890.**—The national government has much less control over *industrial* combinations, because the only provision of the United States Constitution which deals with the power of the national government over commerce or industry within the United States is contained in the words, "Congress shall have power . . . to regulate commerce . . . among the several States."<sup>1</sup> When the Constitution was adopted in 1787, even interstate *commerce* was not particularly important. But the expansion of large corporations which have plants in several States and do business in every part of the Union presents a problem of commercial and industrial control which cannot be solved by the separate state governments. The interest of the public, therefore, must go unprotected or be secured by the national government. For this reason, in response to a popular demand Congress, in 1890, decided that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." This act was intended to supplement the Interstate Commerce Act (§ 261) passed three years earlier.

At first comparatively little attention was paid to the law either by the government or the corporations. It was invoked in 1894 to prevent labor organizations from interfering with the movement of trains engaged in inter-

Ripley (ed.),  
*Railway  
Problems*,  
531-540.

Reasons for,  
and provi-  
sions of,  
the Act.

MacDonald,  
*Select Stat-  
utes*, No. 120.

Beck, J. M.,  
in *Annals  
Am. Acad.,  
Pol. Sci.*,  
24 (1904),  
89-95.

Application  
of the Sher-  
man Act to  
1904.

<sup>1</sup> United States Constitution, Art. 1, § 8, cl. 3.

Ripley (ed.),  
*Trusts,  
Pools, and  
Corpora-  
tions*,  
263-272.

Prentice,  
*Federal  
Power over  
Carriers  
and Cor-  
porations*,  
189-209.

Beck, J. M.,  
in *Annals  
Am. Acad.*,  
24 (1904),  
95-110.

Bureau of  
Corpora-  
tions (1903).

Industrial  
investiga-  
tions.

state commerce. Later the Supreme Court broke up several illegal railway combinations,<sup>1</sup> including the interesting Northern Securities Company. In these railway cases the Supreme Court made clear its position that the restraint was not necessarily unreasonable in order to be illegal. There has been, in consequence, considerable agitation for the amendment of the act, permitting combinations to make agreements that are reasonable. The court, before 1896,<sup>2</sup> declared that "any agreement or combination which directly restrains not only the manufacture but the sale of a commodity among the several States comes within the Anti-Trust Act."<sup>3</sup> If Congress were permitted by the courts to regulate the affairs of industrial corporations which do business in several States, it would expand greatly its own commercial powers and revolutionize the system of industrial control in this country.

**264. Recent Anti-Trust Activity.** — In 1903 Congress organized a new cabinet department known as the Department of Commerce and Labor. One of the bureaus created for this department was that of corporations, the head of which was authorized to investigate "the organization, conduct, and management" of any company other than railways engaged in interstate commerce. The first commissioner of corporations believed that the task of investigation would be simplified greatly by compelling all corporations engaged in interstate trade to secure their incorporation papers from the national government. This would obviate many of the difficulties due not only to the lenient laws of some States, but to the diversity in different state laws (§ 165). As yet (1908) no action has been taken on this suggestion.

Many of the larger trusts have been investigated by this bureau, and many reforms have been instituted without further action than the publications of the commissioner's

<sup>1</sup> Trans-Missouri Freight Case (1897) and Joint Traffic Case, 1899.

<sup>2</sup> Addyston Pipe Case.

<sup>3</sup> Knox, P. C., in Ripley (ed.), *Trusts, Pools, and Corporations*, p. 272.

reports. Because of these investigations, the attorney general of the United States and his representatives have brought suit against the beef trust, the paper trust, the Standard Oil Company, and several other monopolies, because of the violation of the Sherman Act or other commercial laws of Congress. In general, the results obtained in the courts have been favorable to the government, although these suits have not interfered particularly with the business operations of the large corporations. The right of Congress to control the actions of trusts so far as they are engaged in interstate commerce has been upheld by the courts fully. On the other hand, the right of the trust to defend itself by refusing to show its books or give evidence in court on the ground that it might incriminate itself, has been denied corporations.

*International Year Book* (1907)  
777-779.

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White, *Money and Banking*.  
Meyer, *Government Regulation of Railway Rates*, Part II.  
Johnson, *American Railway Transportation*.  
Prentice, *Federal Power over Carriers and Corporations*.  
*Annals of American Academy of Political Science*, 31 (1908), 1-227.

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1. THE CONSTITUTIONALITY OF THE GREENBACKS: Dewey, *Financial History of the United States*, pp. 362-367; Knox, *United States Notes*, pp. 156-166; Upton, *Money in Politics*, pp. 157-170; Hart, *Life of Chase*, pp. 389-414.
2. INTERNAL IMPROVEMENTS: Johnson, A., in Lalor's *Cyclopedia*, II, pp. 568-573; Hadley, A. T., in Lalor's *Cyclopedia*, III, pp. 820-822; McMaster, *History of People of United States*, III, pp. 465-479, IV, pp. 410-426, V, pp. 152-150.

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1. Some disastrous experiments with paper money. White, *Money and Banking*, pp. 120-147.
2. The process of making bank notes. *International Cyclopedia*, under title "Bank Notes."

3. An arraignment of our present system of bank-note issues. Carnegie, A., in *Outlook*, 88 (1908), 487-489.

4. The Sault Ste. Marie ship canal. Kibbie, W. P., in *Engineering Magazine*, 12 (1897), 600-610.

### Questions

1. What kinds of money are in circulation? Which one represents the greatest value? What proportion of our money is in the Treasury?

2. What constitutional right has the United States government to fix rates for interstate commerce? to construct a canal from Chicago to the Gulf of Mexico? to forbid the carrying of goods made by child labor from State to State?

## CHAPTER XXI

### TERRITORIES AND PUBLIC LANDS

**265. Territorial Powers.**—When the Constitution was adopted, Congress obtained the “power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States,” together with the right to admit new States into the Union. Nothing was said in the Constitution about the right of *acquiring* new territory, but there has never been a time when the national government, or any considerable proportion of the people, has opposed the annexation of territories, either by treaty or by joint resolution of the houses of Congress. We may, therefore, distinguish four different territorial powers of Congress: (1) the right to acquire territory;<sup>1</sup> (2) the right to govern it; (3) the right to admit territories as States; and (4) the right to sell or otherwise dispose of any lands the title to which is vested in the United States. It will be noticed that the first three of these are distinctively *governmental*; that is, they are not functions exercised by individuals or by private corporations, while the last is a right regarding property like that of any other owner.

General.

*Constitution*, Art. IV,  
§ 3, cl. 2.

Four classes  
of powers.

**266. The Expansion of National Territory.**—The first territory subject to the control of Congress comprised the public lands west of the Alleghany Mountains, to which the separate States surrendered their respective claims between 1781 and 1802. In 1803, *Louisiana* was

Territorial  
growth  
(1781-1899).

<sup>1</sup> We should notice that the right to acquire territory is one that can be exercised either by Congress, or by the President and Senate acting together.

Ashley, *Am. History*, §§ 171, 232-233, 261, 301-305, 435.

Willoughby, *Territories and Dependencies*, 27-52.

added to this domain, being purchased from France for \$15,000,000. It consisted of nearly a million square miles, covering the western half of the Mississippi Basin, the southwestern boundary being in dispute until definitely located in the Spanish treaty of 1819, which provided also for the purchase of *Florida*. In 1845, we annexed the independent State of *Texas* by joint resolution of the houses of Congress, but only that portion of the territory claimed by Texas and transferred by the State to the United States government in the Compromise of 1850, has ever been subject to the control of the national government exclusively. By treaty with Great Britain in 1846, the forty-ninth parallel of latitude was made the northern boundary of our part of the *Oregon* country, which had been occupied jointly by Great Britain and the United States since 1818. At the close of the Mexican War, in 1848, the very extensive territory south of parallel 42 as far as the Gila River, and west from the Rio Grande to the Pacific Ocean, called the *Mexican cession*, was annexed by treaty, being enlarged still further by the *Gadsden Purchase* of 1853. In 1867, Russia sold us *Alaska*, and in 1899 by the treaty of peace with Spain we came into possession of *Porto Rico*, the *Philippines*, and other numerous smaller islands. *Hawaii* had been annexed during the Spanish-American War (1898) by a joint resolution of Congress.

### PROVISIONAL GOVERNMENTS

Two periods of territorial government.

**267. Temporary Government of Territory.**—During the period that has followed the acquisition of territories, before they have been admitted to the Union as States, they have passed through two stages of territorial development. (1) As their population at first was either scattered or unable to undertake the duties of self-government for other reasons, a provisional government was provided in which the people took no part. (2) When conditions permitted,

each territory was "organized" upon a more permanent basis and governed as described later in this chapter.

The temporary territorial governments, which might properly be called *colonial*, have been left by Congress in charge of military or administrative officials selected by the President. The *territory northwest* of the Ohio River, for which the famous ordinance of 1787 was adopted, was governed at first as one district by a governor and judges, who were appointed by Congress and had power to make and execute laws suitable for the district. Most of the *Louisiana Purchase* was subject for over a decade to a provisional government. *Alaska* is still a colony of the United States, governed by law of Congress which is executed by a governor and assistants whom the President selects; and the *Philippine Islands* were for three years under a military governor, or a commission which had full legislative and executive powers.

Historical forms of temporary government.

Boyd, C., in *Atlantic Mo.*, 82 (1898), 735-742.

**268. Congressional Control of National Territory.**—Before considering either of these forms of territorial government, it will be well to learn the limits of the control that may be exercised by Congress, and to ascertain whether Congress may deal with them in the same way during the organized stage as it does during the provisional period. No very definite statement of the powers of Congress over territory was necessary until the acquisition of lands at a distance from the continental United States a few years ago.<sup>1</sup> As these lands were inhabited by people alien in race and political experience to the citizens of this country, the questions arose at once: were these colonies part of the United States, or did they simply belong to the United States? Did the special limitations placed upon Congress in the Constitution apply to this territory, as, *e.g.*, the one that duties must be uniform throughout the United States,

What are the constitutional limits?

Judson, H. P., in *Rev. of Revs.*, 19 (1899), 67-75.

<sup>1</sup> Before the Civil War the South held that Congress could not prohibit slavery in the territories. This view was accepted by the justices of the Supreme Court in the *Dred Scott* opinion (1857).

or might Congress pass a tariff act for any colony different from that applying to the United States proper? Was Congress under obligation to permit right of trial by jury and perfect freedom of speech under any and all circumstances?

The  
"Insular  
cases."

*International Year  
Book* (1901).

*Outlook*,  
77 (1904),  
446-448.

General  
policy.

Willoughby,  
*Territories  
and Depend-  
encies*, 8-20.

Insular  
government  
at present.

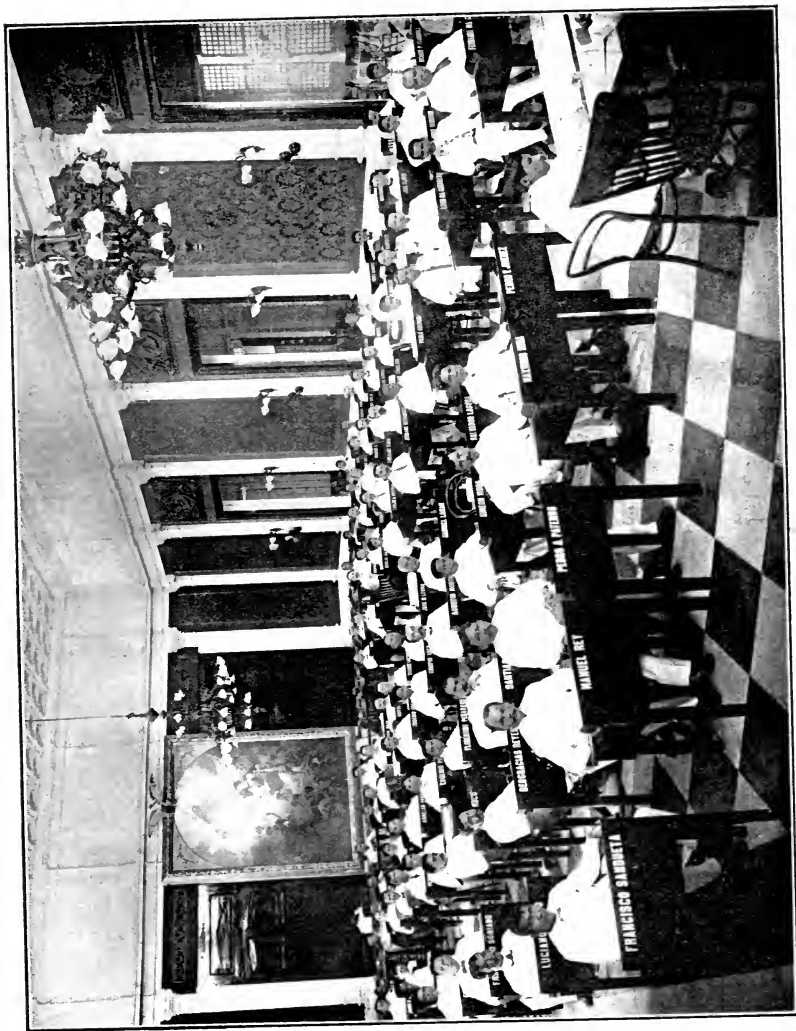
Moses, *Gov't  
of U. S.*,  
272-276.

In some of the "Insular cases" (1901) the Supreme Court decided that Congress might levy special tariffs on the colonies, since they were neither foreign soil nor integral parts of the *United States*. Later decisions (1904) denied the right of trial by jury and the right to bear arms within the Philippine Islands even to former citizens of the United States. These decisions recognized the power of Congress to decide when the Constitution and its amendments shall apply to territory acquired by the United States, *giving Congress absolute control of new territory* until our national legislature limits its own power by extending constitutional rights and privileges to the inhabitants of the new lands.

**269. Present Government of the Philippine Islands.** — With all of the insular possessions, every opportunity has been given of securing those forms of governments which will combine a high degree of efficiency with as much popular government as the conditions permit. After the cession of the Philippine Islands by Spain, they were governed at first by a military governor, and later by a civil commission. By the *law of 1902* provision was made for a much more permanent form of government, all civil rights guaranteed by the United States Constitution being granted except the right of trial by jury and the right to bear arms, both of which have just been considered. At the present time, the Philippine Islands have as liberal a government as can be found in the tropical possessions of any country.

The Philippines have at present a central government, provincial governments and municipal governments. The central government consists of a governor and a *commission* of six besides the governor, who is a member of the commission, all appointed by the President and Senate. The commission is the chief executive body in the islands, and





THE FIRST PHILIPPINE ASSEMBLY (1907)



constitutes as well the upper house of the legislature. The lower house, called the *assembly*, is a body of eighty members<sup>1</sup> chosen for a term of two years by those men 23 years of age who own property or can speak, read, and write Spanish or English. This central legislature makes laws subject to the Philippine acts passed by Congress. The judges of the highest court are selected in Washington, and two "resident commissioners" chosen by the Philippine legislature represent the islands at the American capital.

Each *province* has a board consisting of an elected governor and several appointed officials, who look after the collection of revenues and the preservation of order in the province. A much larger share of governing is left to the *municipalities* into which the islands are divided. These municipalities elect their own magistrate and councils, which govern them under the laws passed by Congress or the insular government. The system seems to work well, and the progress in self-government and in education under American supervision has been creditable to both the Philippines and the Americans.

**270. Government of Porto Rico.**—The greater intelligence of the people of Porto Rico necessarily affects the government of that colony. The *suffrage is universal*, except that those who become voters hereafter must be able to read and write. These voters elect the lower house of the legislature and many local officials, but the upper house consists of eleven persons, five of whom must be Porto Ricans, selected by the President and Senate. Six of these persons are also heads of different executive departments who assist the governor. The governor has about the same powers as governors in organized territories, but appoints a larger number of local officials. As in the Philippines, the governor, as well as the judges of the highest court, hold office directly from the President. One "resident commissioner" represents the territory in Washington.

Willoughby,  
*Territories  
and Depend-  
encies*,  
191-201.

Local gov-  
ernment.

Moses, *Gov't  
of U. S.*,  
276-279.

Willoughby,  
*Territories  
and Depend-  
encies*,  
224-235,  
254-278.

Central  
government.

Willoughby,  
*Territories  
and Depend-  
encies*,  
92-107.

<sup>1</sup>Not more than 100 nor less than 50.

Local  
government.

The system of local government in the island has been completely reorganized under American rule by the central government. The voters are allowed to choose a mayor and councils in the *municipalities*, which form the only district for local government. The people have more control over their finances and some other matters than in the Philippine Islands, but there are no local judges, and the work of local government is at all times supervised carefully by the insular authorities.

Willoughby,  
*Territories  
and Depend-  
encies*,  
128-143.

History and  
present gov-  
ernment.

**271. The District of Columbia.**— In the Constitution, power is given to Congress “to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States.” A law passed in 1790, arranged for the location of the district upon the banks of the Potomac,<sup>1</sup> the land being ceded to the United States by Maryland and Virginia, although the part upon the south bank was re-ceded to Virginia in 1846. The district is now governed by three commissioners appointed by Congress, with power to select minor officials, and supervise the administration of all local affairs.<sup>2</sup>

Willoughby,  
*Territories  
and Depend-  
encies*,  
307-318.

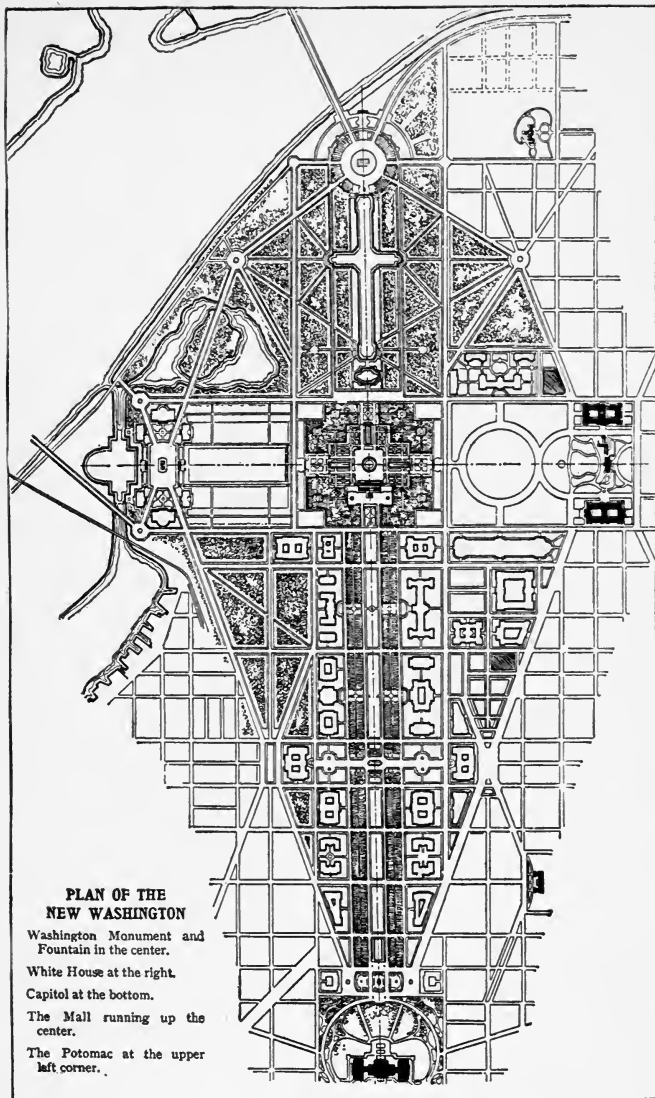
Proposed  
improve-  
ment of the  
national  
capital.

The limits of the city of Washington have been made to coincide with those of the district. Because it is the capital city, especial care is taken to make the city worthy of the American people. Originally laid out by an artist engineer, Washington is prepared admirably to become the most beautiful city in America. By the grouping of public buildings, the creation of parks and the extension of the

Baldwin,  
E. F., in  
*Outlook*,  
70 (1902),  
817-829.

<sup>1</sup> The selection of the location for the national capital aroused a great deal of interest and feeling, as each section was anxious to have the seat of government situated within its borders. Preference was finally given the South in order to gain Southern votes for “state assumption,” a measure which Secretary of the Treasury Hamilton considered invaluable in establishing the public credit.

<sup>2</sup> Two afternoons a month are devoted in Congress to bills relating to the government of the district.



PROPOSED PLAN FOR PUBLIC BUILDINGS, WASHINGTON, D.C.

*Courtesy of The Outlook.*



already fine system of boulevards, plans are being made to place the city in the same class as the finest European capitals.

### ORGANIZED TERRITORIES

**272. The Relation of an Organized Territory to the National Government.**—In one sense, every organized territory is *entirely under the control of Congress*, for that body decides the extent of its boundaries, the form of its government, the part which the people may take in that government, and has a veto on all laws passed by the territorial legislature. In other words, the territory depends upon Congress for its very existence, and derives its fundamental law from Congress. But, by custom, a territory has always been treated as a *rudimentary State*, subject to national supervision, although given the right to direct its own affairs as far as possible, in order that when it becomes a member of the Union, the habit of self-government shall have become fixed.

Degree of  
national  
control.

The territories do not have representatives in Congress, but each has been allowed to elect a delegate who has a seat in the House of Representatives, and who may speak upon all matters affecting his territory, although he may not vote.

Territorial  
delegates.

**273. The Government of an Organized Territory.**—Organized territories have always been governed in much the same way. The legislatures are bodies of two houses, chosen by the voters upon whom the privilege has been conferred by territorial law. Sessions of sixty days are held biennially, and laws are made on all subjects not forbidden by Congress, but when a law has been passed, it may be vetoed by the governor or rejected by Congress.

The  
legislature.

Willoughby,  
*Territories  
and Depend-  
encies*,  
55-58.

The principal executive officials are the governor and the secretary, each of whom is selected by the President with the consent of the Senate for a term of four years. The governor is both the chief representative of the United

Governor  
and  
secretary.

Willoughby,  
*Territories  
and Depend-  
encies*,  
53-55.

States in the territory, and the chief executive of national and territorial law. In addition to the usual message to the legislature, he makes a yearly report to the President, selects many of the minor officials, exercises the right to pardon offenders, commands the militia, and has the right to veto bills. The secretary is the principal clerical officer of the territory.

Territorial  
courts.

The highest territorial court consists of three judges appointed by the President and Senate. All cases arising under territorial law, and many under the Constitution and statutes of the United States, are decided finally by these courts. All local executive and judicial officials are chosen by the legal voters of the territory.

Two  
methods of  
admission.

Cooley,  
*Constitu-  
tional Law*,  
175-183.

**274. The Admission of New States.**—No organized territory believes its territorial government to be other than provisional, considering it the chrysalis form of its existence. Its dream is to enjoy full Statehood, and it uses every possible means to obtain from Congress the right to join the sisterhood of States. Sometimes it calls a constitutional convention that *frames a constitution*, which, after ratification by the voters, is sent to Congress for its approval. In this the State usually renounces all claim to the title of the public lands, and agrees that certain articles, as, *e.g.*, those relating to public education and religious liberty, shall be revocable only with the consent of both the United States and the State. If no constitution has been adopted, Congress passes an *enabling act*, which authorizes the framing of a constitution. After this has been accepted by the people and Congress, the territory is admitted as a State.<sup>1</sup>

Danger and  
problems  
in state  
admission.

In a federal system of government in which each State is entitled to the same rights and privileges as each of the other States, the principles governing the admission of new

<sup>1</sup> According to the Constitution of the United States, "No new State shall be formed or erected within the jurisdiction of any other State, nor [may] any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress."



States is of the first importance. No circumstances can justify the admission of new States in order to give help to the party in power in a coming election, nor can they warrant the exclusion of a territory for political reasons. Several States have proved also by their experiences the undesirability of uniting within the boundaries of a single State radically dissimilar sections. For example, in some of the Eastern States there has been constant strife between the commercial interests of the sea border, the rich farmers of the plains and the hardy mountaineers. Where these interests are dissimilar and fairly permanent, much dissatisfaction would have been avoided by a different arrangement of state boundaries. One of the great problems of the future must be the permanent status of those territories inhabited chiefly by races alien to our own.

### THE PUBLIC LANDS

**275. Disposal of the Public Lands.**—When the United States came into possession of the territories mentioned in § 266, it acquired not only the right to govern these regions, but the title to unoccupied lands within their borders. As we just noticed, the title to these public lands did not pass to the States upon their admission to the Union, but remained with the national government.

Title to public lands.

This *public domain* was intended at first to be a profitable investment,<sup>1</sup> but has been used much more for the purpose of developing the newer sections of the country. After completing the surveys described in § 279, the lands have been *granted* to States and to individuals, or *sold* at a nominal figure. An area greater than that of the thirteen original States has been transferred to railways or to States for internal improvements. Two sections of public school lands in each township have been given to the various States

Grants for public improvements and schools.

Hart, *Actual Gov't*, § 226.

<sup>1</sup> In one year (1836) the income from public lands exceeded that from customs duties, but the total revenue received by the national government has been less than the total cost of administration.

upon their admission to the Union,<sup>1</sup> and, during the sixties, general grants of the lands were made for the aid of state agricultural schools. Parts of sections have also been assigned to soldiers and sailors for military service, and large quantities have been sold at \$1.25 or \$2.50 an acre.

Importance  
of our land  
policy in  
the past.

Bullock,  
(ed.), *Read-  
ings in Pub.  
Finance*,  
64-72.

Nothing has affected more vitally the political as well as the economic development of the United States, and the social life of the people, than the public lands. During the closing years of the Revolution the public lands in the West produced the chief bond of union among the States (§ 181). In the West the possibility of acquiring title to public lands was the principal influence in the rapid development of the section east of the Mississippi between 1815 and 1860, and west of the Mississippi after the Civil War. Our public land policy has helped to keep us a nation of small farmers; it has developed a real democracy, not simply political, but social and economic. It has helped us to absorb as true American citizens a multitude of foreigners who have come to us. But in many ways our laws have been so liberal as to be unwise. The national government has given away land that it should have kept. More than this, its leniency has permitted persons to stretch even those liberal laws and defraud the people of lands that the future will show should have been retained by the Nation.

The Home-  
stead Act.

Coman,  
*Indus. Hist.  
of U. S.*,  
279-282.

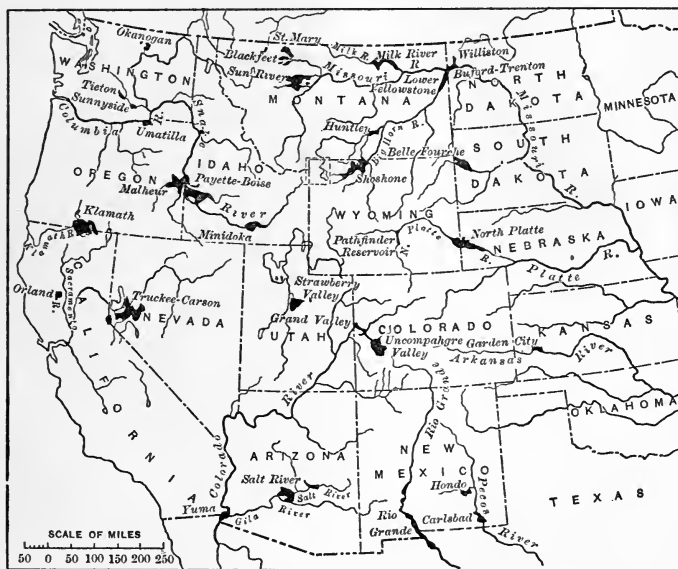
**276. Agricultural and Grazing Lands.**—Most of the West was settled under one of two laws — (1) the *preëmption law* which was in force until 1891 and permitted any citizen who was a head of a family to require 160 acres by living on it six months and paying \$200, or (2) by the *Homestead Act*, first passed in 1862 and modified somewhat later. This law permits any citizen or person who intends to become a citizen to acquire title of a quarter section, 160 acres, of ordinary agricultural lands by living on it and cultivating it for a period of five years. Veterans are allowed to deduct

<sup>1</sup> Before 1848 one section only.

the time of actual military service after a year's residence on the homestead.<sup>1</sup>

Public lands that are non-irrigable, and unsuitable for agriculture, may be acquired in blocks not exceeding 640 acres under the Desert Land Act, \$1.25 being paid for each

Desert Land  
Act Frauds.



NATIONAL IRRIGATION PROJECTS, 1908

acre. Both the Homestead Act and the Desert Act have been used by speculating corporations to acquire large areas of valuable lands at low figures. Unoccupied public lands have been fenced by cattlemen, who have had the use of these lands without charge. The large amount of fraud brought to light by careful investigations during Roosevelt's administration has led to a widespread reform in the

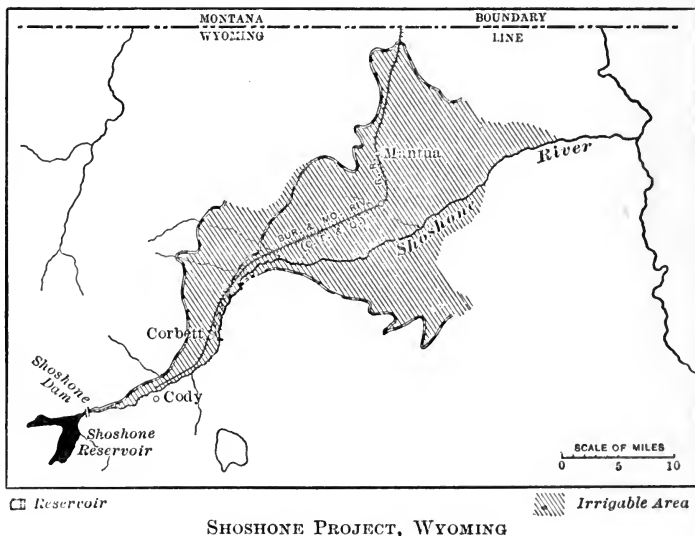
Brown, H. S.,  
in *Outlook*,  
85 (1907),  
427-439.

<sup>1</sup> An attempt was made (1908) to extend the homestead law to tracts of 320 acres of non-irrigable lands on condition that it be cultivated extensively during the period of five years required for securing title. This passed the House, but was not taken up in the Senate.

administration of the land laws and a renewed interest in all attempts to preserve our natural resources — land, water, timber, and mineral.

General  
character of  
the work.

**277. The Irrigation Law of 1902.** — The culmination of the liberal land legislation of the United States has been the enactment (1902) and the application of a law for the irri-



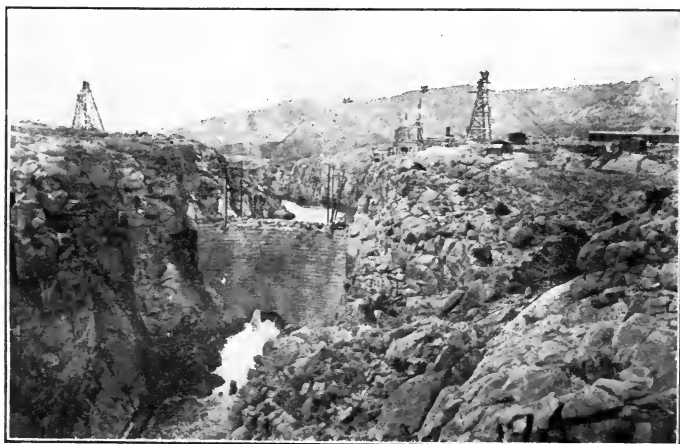
gation of lands that cannot be used for agriculture under natural conditions. The government has planned, and is now constructing, great reservoirs in which the spring floods are saved to be used for irrigating, during the summer and fall, lands which would otherwise be unproductive. This policy applies to the States or territories in the western part of the country. The scheme is largely self-supporting. A fund is created by the sale of public land in these States. This money is used to construct dams; the lands irrigated from these reservoirs are sold to actual settlers and the money placed in the fund for further expansion of the work.

Newell,  
F. H., in  
*Outlook*,  
83 (1906),  
933-941.

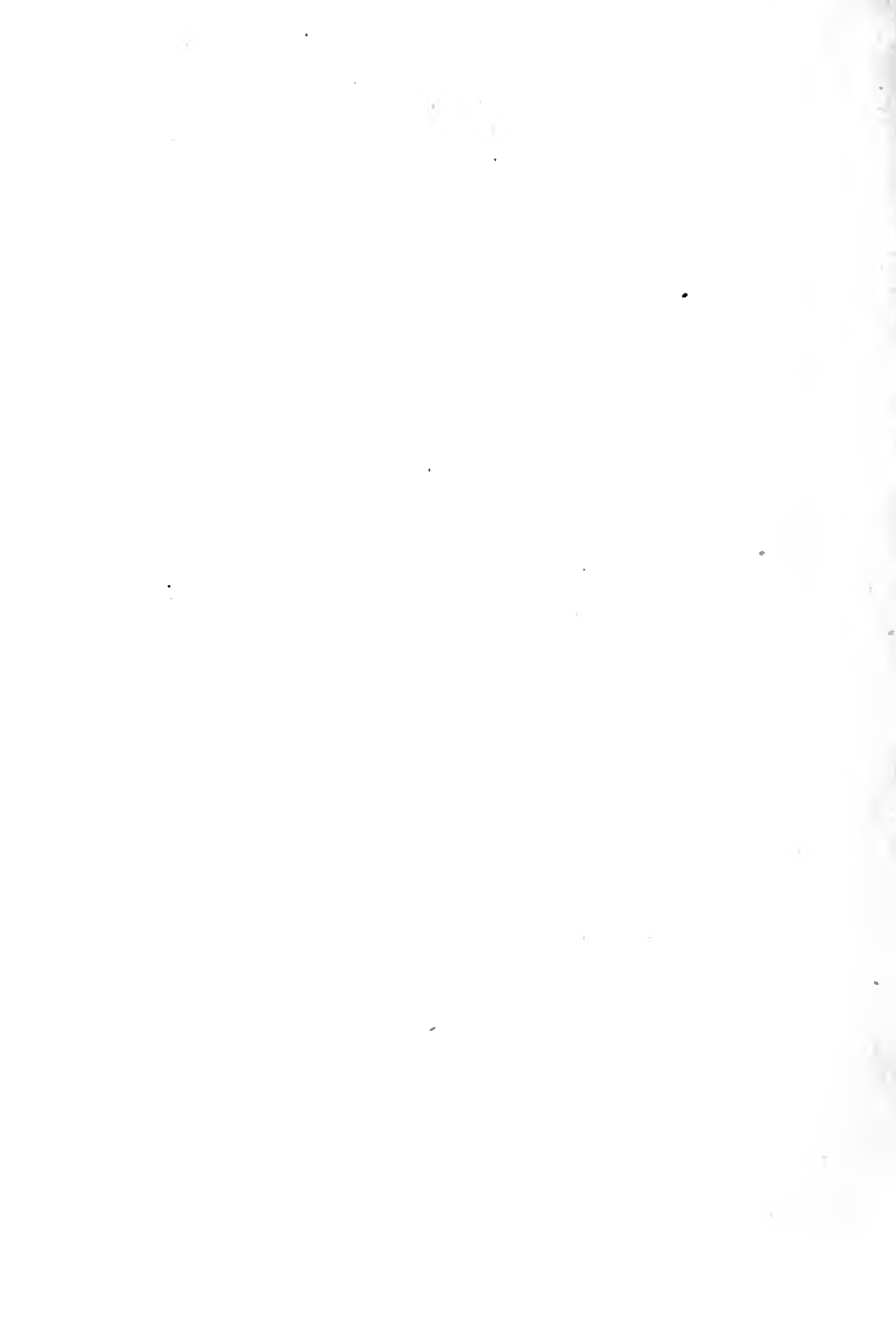
Davis, A. P.,  
in *Annals  
Am. Acad.*,  
31 (1908),  
203-218.



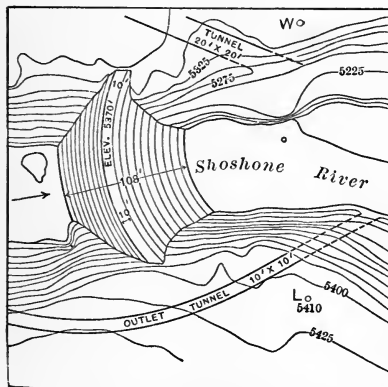
ROOSEVELT DAM (1908), SALT RIVER, ARIZONA



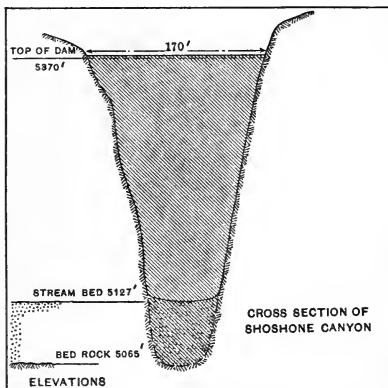
PATHFINDER DAM, PLATTE RIVER, WYOMING



The reclamation service of the Interior Department has achieved remarkable results in examining districts that might be made arable, in planning the construction of dams amid great engineering difficulties, perhaps hundreds of miles from the territory provided with water, and in carrying this policy into effect. The execution of this plan has involved us in international complications, with Mexico on the lower Rio Grande and Colorado because of the Mexicans whose supply of water is affected, and with Great Britain on the



TOP OF SHOSHONE DAM



CROSS SECTION

Montana border. These are but minor incidents in the completion of a plan which will literally "make the desert blossom as a rose."

Work has actually been begun on more than twenty-five of these projects (1908), and the total cost of work that has been planned is more than one hundred millions. It is expected, however, that the increase in value of the lands brought under irrigation will exceed the entire cost of construction by 50 per cent. The average value of the crops from these lands undoubtedly will amount to one half the original cost of construction. Two of the projects may be considered as typical of others. The Roosevelt dam in Arizona is the largest of the projected dams, being 280 feet high and 630 feet wide, forming a reservoir more than 25 miles long. An area of 160,000 acres in the

Reclamation work planned. Types of projects.

Newell, F. H., in *Pacific Mo.*, 18 (1907), 471-483.

Salt River valley will be reclaimed by the water from this source. One of the most difficult of the projects has been completed in the Gunnison cañon in Colorado. The water from this dangerous and almost inaccessible gorge has been brought to the Uncompahgre valley by a tunnel more than six miles in length cut through the intervening mountain.

Mineral  
laws.  
Stone and  
Timber Act.

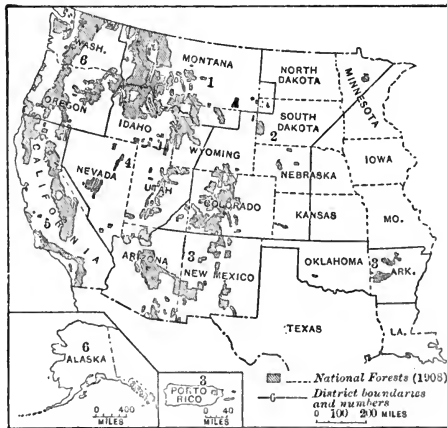
Hart, *Actual  
Gov't*, 338.

**278. Mineral Lands and Forests.**—It has been possible for individuals and corporations to acquire possession of the immense mineral wealth of the United States, because the national government has permitted citizens or associations of citizens to locate small mining claims varying in size with the kind of mineral. In order to retain these claims, a minimum of \$100 worth of labor must be performed on

them each year for the first five years. Under the Stone and Timber Act, citizens may purchase 160 acres of lands that are not reserved or open under other laws.

Forest  
reserves.

Black, R. L.,  
in *Outlook*,  
80 (1905),  
1020-1028.



NATIONAL FORESTS

A large percentage of the forests of the country have been set aside in reserves which are not for sale, although they pro-

Heyburn,  
W. B., in *In-  
dependent*,  
60 (1906),  
667-671.

duce considerable timber by thinning out the dense growths. The national government realized the need of preserving the forests before the public awakened to the danger. At the present rate of destruction, our forests will be destroyed within a generation, the soft woods suitable for making paper being almost exhausted already. The possibility



of the destruction of the forests, the direct commercial and æsthetic losses that come with deforestation, the indirect consequences to the water supply of denuding the hills of trees so that spring floods are swollen in volume while the summer streams become tiny rivulets—all these dangers caused President Roosevelt and Chief Forester Pinchot to increase the *forest reserves* to more than 160,000,000 acres. Great care is taken by the construction of fire breaks and the constant patrolling by rangers to prevent disastrous forest fires. Lumber thieves are watched, and prosecuted with vigor. Whenever possible, large areas are planted with trees suitable to the soil and climate by the Forest Service of the Department of Agriculture, which has entire charge of the reserves. An earnest attempt has been made to create, through the coöperation of the Atlantic States, an Appalachian forest reserve, from lands held or controlled by the States. This interest in such a necessary reserve was one of the chief causes leading to the conference of governors at Washington (1908) (§ 164).

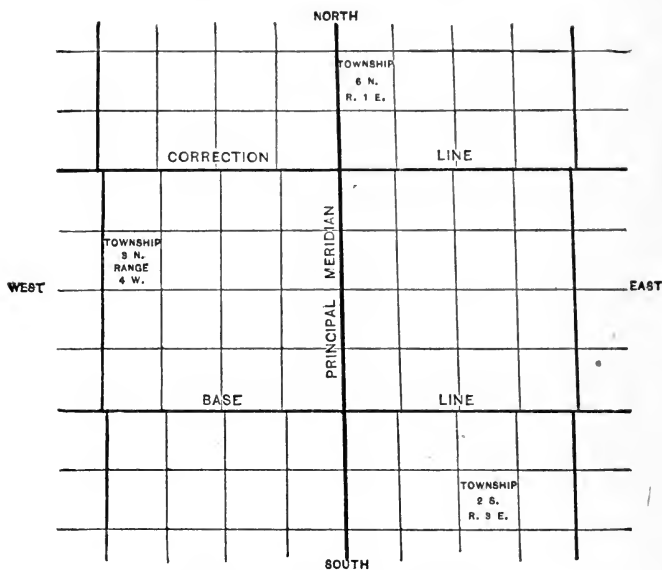
Pinchot, G.,  
in *Annals*  
*Am. Acad.*,  
31 (1908),  
219-227.

Some of these reserves possess such marvelous scenery that they are not treated as ordinary reserves, but are considered national parks. The largest of these, Yellowstone Park, is half as large as the State of Massachusetts, and is famous for its geysers. Probably the most beautiful is the far-famed Yosemite.

National  
parks.

**279. The Method of surveying the Public Domain.**—The surveys of our public lands have been made in accordance with ordinances adopted during the eighteenth century. These provided for the selection of certain parallels of latitude to be called *base lines* and certain meridians of longitude called *principal meridians*, the intersection of a base line with a principal meridian being the starting point for surveying all of the lands in that part of the country. Townships six miles square are then surveyed to the north, east, and west, and possibly to the south, being named according to the distance from the base line and the meridian; the distance to the east or west being indicated by the number of the *range*, and the distance to the north or south by the number of the *township*, as shown in the diagram given below.

The general  
process.



METHOD OF MAKING SURVEYS

However, as meridians of longitude converge to the north, the townships which were not near the base line were, therefore, less than six miles across from east to west. To avoid this difficulty, parallels of latitude called *correction lines* are arranged every twenty-four or thirty miles, and a fresh start is made so as to keep the townships as nearly six miles square as possible.

6	5	4	3	2	1
7	8	9	10	11	12
13	17	16	15	14 160 ACRES	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Townships  
and  
sections.

SECTIONS OF A TOWNSHIP

Each *township* is subdivided into thirty-six *sections* each one mile square and numbered as shown in the accompanying diagram. The sixteenth and thirty-sixth sections are given to the States for the benefit of the public schools. Each section is further subdivided into halves, quarters, and possibly eighths.

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Hart, *Actual Government*, pp. 332-380.  
Willoughby, *Territories and Dependencies of the United States*.

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2. TERRITORIAL POLICY OF THE UNITED STATES (Historical): Boyd, C., in *Atlantic Monthly*, 82 (1898), 735-742; Hart, A. B., in *Harper's Monthly*, 98 (1899), 319-328; Judson, H. P., in *Review of Reviews*, 21 (1900), 451-456; Snow, *The Administration of Dependencies*, pp. 537-577; Johnston, A., in Lalor's *Cyclopedia*, III, pp. 914-920.
3. SIGNIFICANCE OF THE DECISION IN THE "INSULAR CASES": *International Year Book*, for 1901, under title "United States"; *The Outlook*, 68 (1901), 337-339, 69 (1901), 962-965, 77 (1904), 446-448; Edmunds, G. F., in *North American Review*, 173 (1901), 145-153; Boutwell, G. S., in *North American Review*, 173 (1901), 154-160; Taylor, H., in *North American Review*, 173 (1901), 577-593; Snow, *The Administration of Dependencies*, pp. 562-572.
4. THE RECLAMATION SERVICE: Helburn, J. W., in *American Magazine*, 61 (1906), 493-505; Wright, H., in *World To-day*, 10 (1906), 156-163; Blanchard, C. J., in *Sunset Magazine*, 17 (1906), 207-214; and in *Review of Reviews*, 31 (1905), 701-704; Denning, W. C., in *Independent*, 62 (1907), 1079-1085; Forbes-Lindsay, C. H., in *Harper's Weekly*, 51 (1907), 158-161; Page, A. W., in *World's Work*, 14 (1907), 9322-9330; Lemenager, H. V., in *Review of Reviews*, 37 (1908), 689-698; *Report of Smithsonian Institution*, (1903) 827-841, (1904) 373-388, (1906) 469-492.

### Studies

1. Local self-government in America and in European colonies. Jenks, J. W., in *Review of Reviews*, 26 (1902), 580-588.
2. Both sides of the colonial question. Bryan, W. J., in *Reader*, 10 (1907), 142-148, 255-259; Beveridge, A., in *Reader*, 10 (1907), 148-156, 259-269.
3. Philippine problems. Ide, H. C., in *North American Review*, 186 (1907), 510-524.
4. Naturalization and citizenship in insular possessions. Charlton, P., in *Annals of American Academy of Political Science*, 30 (1907), 104-114.
5. A hundred years of the District of Columbia. Shaw, A., in *Review of Reviews*, 22 (1900), 675-686.
6. The way of the land transgressor. Pease, L., in *Pacific Monthly*, 18 (1907).

### Questions

1. What territory has been annexed by joint resolutions of Congress? How does it compare in area with that acquired by treaty? What States, besides the original thirteen, have never been national territories?
2. What territories may be considered organized at the present time? Make a table showing the form of the legislature, the executive officials, and the local governments (with the method of selection in each case), for Arizona, Hawaii, Porto Rico, and the Philippines.
3. When was this State admitted to the Union? Were any limitations placed upon it at that time? What is the value of the school lands or the amount of the fund created by the sale of the lands? Does the United States still hold the title to public lands in this State? Name any public buildings, forts, or reservations in this vicinity belonging to the national government.
4. Where is the nearest base line? the nearest principal meridian? In what range and township do we live?

## CHAPTER XXII

### MISCELLANEOUS NATIONAL ACTIVITIES

#### THE POST OFFICE

**280. The Post Office as a Business Organization.** — The post office is the only notable example of a business actually conducted by the national government. More than 150,000 persons are employed in gathering and distributing the mails, over 60,000 post offices have been established, and nearly 150 pieces of postal matter for every man, woman, and child in the United States are handled yearly. Unlike ordinary firms, Uncle Sam does not seek to make money through the Post Office Department, but gives the people the best service possible at less than cost, the deficit in 1907 being \$7,000,000 in a total expenditure of \$190,000,000.

Amount of business done.

Smith, C. E., in *Cosmopolitan*, 27 (1899), 1-14.

Post offices are divided into four classes, according to the amount of the business transacted. Postmasters are appointed by the President and Senate for the first three classes, about 7500 in number. The other postmasters, whose salaries are less than \$1000 each, are chosen nominally by the Postmaster-general, but really by the congressmen from the State or district in which the post office is located. None of these officials is subject to civil service rules, and many are changed whenever a new administration is inaugurated at Washington. Most of the employees, including postal clerks, railway mail clerks, and mail carriers, are appointed by the Civil Service Commission (§ 44), being continually reëxamined by inspectors to insure efficiency.

Postmasters, clerks, and carriers.

Fairlie, *National Administration*, 179-185.

The postal system was under the control of the government even in colonial times, but the rates were exorbitant, and the methods in use

History of the postal system.

Harrison, *This Country of Ours*, 233-240.

Mail routes and railway post offices.

Crissey, F., in *World's Work*, 5 (1902), 2873-2880.

International Postal Service.

Meyer, G. v. L., in *No. Am. Rev.*, 187 (1908), 330-336.

The telegraph.

very different from those of the present. Letters were usually the only things carried. Stamps were not used, and postage was not paid in advance. Until 1845 it cost  $12\frac{1}{2}$  cents to send a letter 100 miles, and 25 cents for any distance greater than 450 miles. After Sir Rowland Hill had demonstrated in England the advantage of adhesive stamps and a reasonable rate, not dependent on the distance, we adopted in 1845 a modification of this plan. Charges have since been lowered greatly, the present rates having gone into effect October 1, 1883. The increase of business has certainly justified this last reduction, for the postal revenue is more than four times as great as it was twenty-five years ago, notwithstanding the proportionally larger business done for the same income, and the costly improvements that are constantly being made in the service.

**281. Methods employed by the Postal Service.** — In addition to the post offices maintained for the sale of stamps and money orders and the delivery of mail, postal routes have been established over which the mails are transported. *Contracts* are made for carrying the mail on these routes; with companies, for the routes most traveled, as on railways or large rivers; with individuals, in more isolated regions. Moreover, all other persons or corporations are forbidden to carry mail for a compensation over these routes, as the government retains a monopoly of the business. Special fast mail trains are operated between large cities and on transcontinental lines. On all railways the mails are distributed by railway mail clerks at all hours of the day, in order to facilitate its delivery. This system is employed even on electric cars, which are used for collecting letters in cities.

The United States is a member of the International Postal Union which was organized in 1891 for the purpose of establishing uniform rates on all letters, periodicals, and books from one to another. These rates are now the same to nations not in the Union. The rates for mail are the same, however, from the United States to our island possessions, Mexico, Canada, Germany, and Great Britain,<sup>1</sup> as they are between points in this country. The United States has not joined the International *Parcels* Post Union which covers all of Europe, sending packages which weigh eleven pounds or less for small amounts. Special arrangements have been made with South American countries for carrying packages, Germany being the only European power to which they can be sent, but all American nations include parcels with other mail, although at much higher rates than prevail in Europe.

By a law enacted in 1866, the Post Office Department has authority

<sup>1</sup>To Great Britain letters only are included at this special rate. Germany gives us low rates on letters and parcels.



POST OFFICE, CHICAGO, ILL.



Courtesy of the *Review of Reviews*.

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INTERIOR OF THE NEW YORK POST OFFICE





to acquire the ownership and control of telegraph lines which it may need. This authority, of course, it has never exercised. Postal telegraph lines are being operated successfully by most of the progressive European governments.

**282. The Work performed by the Post Office** includes not only the collection and distribution of the mails,<sup>1</sup> but the issuance of money orders. Free collections and deliveries have been established in cities, large villages, and in many rural districts, the number of daily deliveries depending upon density of population and the distance from the post office. This service is distinctly inferior to that of many foreign countries, where the mails are somewhat cheaper and deliveries are much more prompt. This is due partially to the greater distances in America, and even more to the fact that in the United States the letters give a large surplus revenue which is used to make good the deficit from other branches of the service. The mail for rural districts is really delivered from traveling post offices, the former post office usually being discontinued. This rural service has resulted in a marked increase of business, and has been very successful.

A law of 1910 permits the use of designated post offices as postal savings banks. The system has been tried with success in foreign countries, particularly Great Britain, France, and Italy. The government pays 2 per cent interest, but no person is allowed to deposit more than \$500. As 98½ per cent of all deposits in our state savings banks are in thirteen States, the postal bank offers *security as well as opportunity* for savings, particularly in the other thirty-three.

Valuable letters and packages are registered at the post offices or by mail carriers at the homes on the payment of eight cents besides postage. A record of every registered parcel is kept by each person through whose hands it passes, and, in case of loss, the sender may receive an indemnity not exceeding \$25.

Both domestic and international money orders are issued at certain offices, at a nominal charge. In 1907, 62,530,408 domestic orders

Mails, money orders, and free deliveries.

Mayo, E., in *Outlook*, 75 (1903), 298-310.

Willey, D. A., in *Rev. of Revs.*, 27 (1903), 55-60.

Postal savings banks. Meyer, G. v. L., in *Rev. of Revs.*, 39 (1909), 47-48.

Registered mail.

Amount of money orders.

<sup>1</sup> Ordinary mail is divided into four classes. Letters are first-class matter; periodicals, second class; books, third class; and merchandise, fourth class. The rates are highest upon first-class mail, and lowest for second class.

were issued and 3,179,511 foreign orders, for a total amount of \$563,731,050.65.

Dead Letter Office.

When the name and address upon a package cannot be deciphered or the mail has not been delivered for other reasons, it is returned directly to the one who sent it, if his name appears upon the letter or parcel; otherwise, through the Dead Letter Office, where it is opened if necessary. The skillful clerks of this office display a wonderful ingenuity in reading addresses that are absolutely meaningless to the ordinary individual.

Hall, J. W., in *Harper's Weekly*, 51 (1907), 1737.

General defects.

*New Encyc. of Social Reform*, 930-931.

Cunniff, M. G., in *World's Work*, 7 (1903-4), 4074-4085, 4245-4250, 4589-4594.

Second-class mail.

**283. Observations on the Postal Service.** — With all of its merits, the postal service exhibits many defects. As the department is not organized on a thoroughly satisfactory business basis, unnecessary financial losses are constantly occurring. (1) The appointment of postmasters without special regard to *preparation* for their duties, and the frequent *changes* that occur under the present system, are in themselves inexcusably costly. (2) Abuses are likely to arise in *awarding contracts* for carrying the mails, the claim being made that the government pays much more than express companies for similar services. As the transportation of the mails amounts to more than 40 per cent of the entire cost of the service, overcharges would easily account for a deficit of ten millions a year.<sup>1</sup> (3) The government sends *free* an enormous quantity of publications, seeds, and other articles both the cost and transportation of which would be saved if the recipient were obliged to pay the postage. (4) A great amount of discussion has taken place in connection with the rates for *second-class* matter. Since the postage paid on the periodicals coming under this class covers only a small part of the cost incurred in handling them,<sup>2</sup> an earnest attempt has been made to exclude all advertising

<sup>1</sup> A large amount would be saved if the government would purchase its own mail cars, permitting them to be attached to trains in the same way as express cars or sleeping cars, which are not owned by the railway companies.

<sup>2</sup> For the year 1907-8 second class mail gave 6 per cent of the revenue, and constituted 65 per cent of the postal expenses.

circulars, books which have claimed to be periodicals, and newspapers whose circulation is almost entirely unpaid. A revision of the law for all second-class matter has been proposed, but without results, the enormous deficit for this class of mail being justified on the ground of its educational value.

# PROTECTION OF FOOD SUPPLY

**284. Government and Agricultural Development.** — Only General. during recent years has the national government undertaken any work that would prove of direct benefit to those engaged in agriculture or allied industries. *Its present activities are exceedingly varied and valuable* not alone to those who profit by the help and suggestions given, but to the country at large, since its wealth is augmented greatly and the people are provided with foods that are purer and more nutritious.

Dinsmoor, A., in *Craftsman*, 14 (1908), 180-185.

Most of the work is supervised by the *Department of Agriculture*, the different bureaus of which are doing an immense amount of investigation into the agricultural needs and problems of the United States, devising numerous aids of a practical nature for the farmers of the country. Coöperating with bureaus of this department are the well-equipped *State Agricultural Colleges* for each of which Congress has appropriated public lands and is granting annually a sum of \$50,000 per year.<sup>1</sup> The instruction given to the regular students in these schools is supplemented by short courses offered to farmers during the Christmas vacation, by demonstration trains which bring to the farmers the results of investigation that may prove of value in that locality, by lectures and object lessons at farmers' institutes, and by the results achieved on tens of thousands of demonstration farms which are being conducted in accordance with advice from Washington or the nearest agricultural college. This practical work consists, to a large extent, in the application

Important agents used in agricultural development.

*International Year Book* (1907), 10-15.

Corbin, *Which College for Boy*, 211-243.

Carleton, *Industrial Evolution*, 206-222.

<sup>1</sup> \$25,000 before 1907, increasing \$5000 per year until 1912.

Jewell,  
*Agricultural Edu-  
cation*,  
71-127.

of the discoveries made by the experts and students in the *experiment stations*, of which one or more are to be found in every State. Congress appropriates \$30,000 annually for each of these exceedingly valuable laboratories which are solving the numerous problems of soil, plant development, diseases or other agricultural questions for which they have especial advantages.

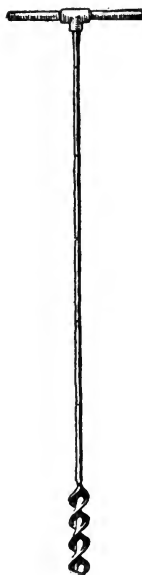
Soilsurveys.

*Report of  
Bureau of  
Soils.*

**285. Investigation and Use of Soils.**—A very extensive survey of the soils of the United States has been made to ascertain the *character, ingredients, and possibilities of the soils* in different States and sections. The total area which has been examined carefully aggregates about one fourth of the improved farm land of this country, although many surveys are made in unoccupied regions in order to discover what changes would be required for the growing of crops in remote territories and the possibilities of these lands. Especially in the South, this work is being aided by liberal state appropriations. Maps of the lands surveyed which show the character of the soils and their uses are prepared and distributed.

Utilization  
of ordinary  
soils.

Poe, C. H.,  
in *World's  
Work*,  
9 (1905),  
5955-5960.



SOIL AUGUR

The problems of obtaining the best possible results from ordinary land, of utilizing lands that appear to be "worn out," of developing arid lands, of reclaiming alkali regions, and of draining swamps have received considerable attention. *The value of land for agriculture* depends to a large extent on the presence in it of *nitrogen*, besides several mineral elements

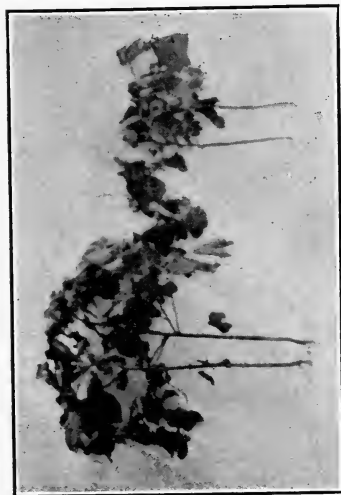
Grosvenor,  
G. H., in  
*Century*,  
68 (1904),  
831-839.

and the absence of materials injurious to crops. Soils that are excellent for one crop are valueless for others, since different plants use different elements of the soil. A wise rotation of suitable crops gives a soil opportunity to replenish a supply of some elements which have been diminished

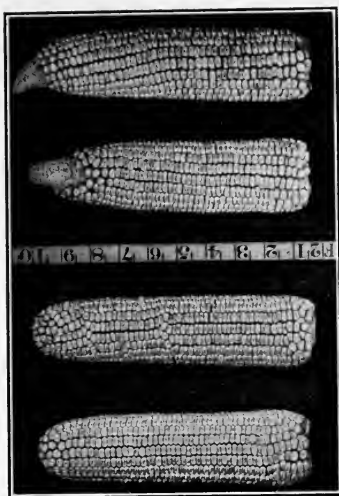


On demonstration farm

With ordinary methods  
COTTON UNDER BOLL WEEVIL CONDITIONS



COTTON UNDER SCIENTIFIC AND ORDINARY CONDITIONS



CORN IMPROVED BY THE DEPARTMENT OF AGRICULTURE



or exhausted. "Worn-out" lands may simply be lacking in some element essential to the plants which have always been grown on that soil but may have abundant supplies of most other soil elements. It may be a simple process to provide these lands with the elements that have been exhausted. It has been discovered that most soils may be resupplied with nitrogen—the most important single soil element—by the simple process of growing *leguminous plants* like peas, beans, clover, or alfalfa, the roots of which, by the aid of the right form of *bacteria*, draw nitrogen from the air. If the bacteria are absent from the soil, they are furnished by the national government, and the soil is "inoculated."

Government experts have paid especial attention to lands that are arid or contain alkalies. Not only is the government preparing (§ 277) to provide these rich lands with the chief thing they need—water—but efforts are being made to utilize the lands that cannot be irrigated. Through a study of the soil and of means to utilize all the moisture there is by improved processes of "*dry farming*," or by the planting of crops that need little water, these lands are becoming valuable. *Alkali lands* which were considered useless because of the presence of injurious salts have been freed from these elements by the simple process of flooding and subsoil draining.

**286. Plant Development.**—The best results from the use of soils requires not only the adaptation of crop to soil, but the selection of that type of plant which is best suited to the climate and the purpose for which it is intended. By the careful selection of seed alone many farmers of the corn belt have increased their yield from 25 to 50 per cent. The national government has been trying to demonstrate that by paying more attention to the selection of that variety which will give not only *the largest gross yield* but the greatest amount of *nutrition*, a half billion dollars a year without extra expense can in time be added to the wealth of the country in connection with corn alone.

Du Puy, W. A., in *World To-day*, 14 (1908), 404-408.

Use of arid and alkali lands.

Harwood, W. S., in *Scribner's*, 31 (1902), 646-648.

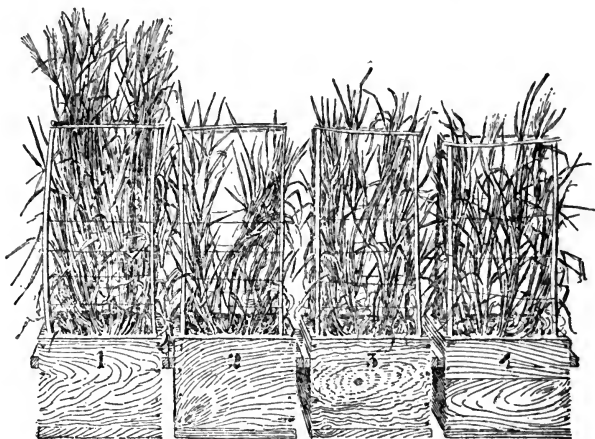
*Year Book of Agriculture* (1907), 451-468.

Selection and adaptation to soil.

Poe, C. H., in *World's Work*, 9 (1905), 5960-5961.

Breeding  
better  
plants.

The breeding by government experts of better varieties of corn, wheat, barley, oats, or other staple cereals will mean



BARLEY COMPARISON

(Results at Maine Experiment Station with Different Fertilizers)

*Year Book  
of Agriculture* (1907),  
44-53.

a gain of several billion dollars, without additional cost of cultivation, as the government helps the farmers to select



TOBACCO COMPARISON

(Results at Ohio Experiment Station, (1) without and (2) with Phosphate)

the types which are best suited to their needs. The development of a cotton that resists more easily the ravages of the destructive boll weevil, the doubling of the sugar-producing ability of

Harwood,  
W. S., in  
*Scribner's*,  
31 (1902),  
648-661.

the sugar beet, new tobaccos that are hardier, yet finer, and types of cereals or vegetables that require less moisture or



withstand greater cold than the ordinary varieties, are among the *results obtained*, and the future gives promise of more wonderful discoveries.

Not the least successful of the tasks undertaken in connection with the new agriculture are the *importations of new plants or new varieties*. From the interior of China we are obtaining fruits or grains that can be grown on the arid lands of the great plains. Siberia has yielded plants that show greater resistance to cold than any we have in America. Some varieties of imported alfalfa will grow where ours will not, or will produce a larger number of crops yearly. Excellent examples of the present economic importance of an imported fruit is the Washington navel orange brought from Brazil; of an imported cereal is the durum wheat, a crop of 50,000,000 bushels of which is grown now mostly in the land of little rain.

**287. Preservation of Food Supply.**—One of the greatest savings effected by these scientific investigations of the national government is connected with the diseases which destroy plants or animals wholesale. All trees, shrubs, or animals *imported* from other countries are examined to prevent the introduction of new or dangerous diseases or insects. Frequently, as in the case of scale on orange trees, the pest is destroyed by the use of insects that use the pests for food. Parasites of insect pests, or birds which live upon objectionable moths or other injurious insects, are encouraged or brought to the place where they are needed. In the case of the Mexican boll weevil, which is spreading eastward, playing such havoc with the cotton crop, all these means have been used, in addition to the attempted development of a variety of cotton boll that will not be subject to the weevil. Spraying has been found very effective for fruit trees, while solutions of iron sulphide have been used to destroy weeds without affecting the crop.

Some of the worst *diseases of stock* have already been eradicated by vigorous treatment, frequently by outward

Importations of plants.

*Year Book of Agriculture* (1907), 9, 42-47.

*Outing*, 53 (1908), 69-76.

Destruction of agricultural pests.

Poe, C. H., in *World's Work*, 9 (1905), 5961-5964.

Van Norman, L. E., in *Rev. of Revs.*, 37 (1908), 684-688.

Protection of animal products.

*Year Book  
of Agriculture* (1907),  
28-39.

application. It is estimated by James Wilson, Secretary of Agriculture, that the expenditure of \$220,000 saved probably five hundred millions by preventing the spread of a virulent form of cattle disease. The government is trying not only to protect stock from destruction, but to develop those strains which will give best profits. Much less has been done with animals than with plants, however. Investigations are made of dairies and their products, but the indebtedness of the farmer is to the discoveries in the agricultural colleges of means for separating cream, and for testing the butter fat in milk.

Meat  
inspection.

*Inter-  
national  
Year Book*  
(1907),  
485-486.

Gauss, *Am.*  
*Gov't*,  
739-748.

**288. Food Inspection.** — Of a somewhat different character is the inspection of foods by government officials in order to insure the purchaser against impure meats or other foods. This is allied closely with the work done by the local governments (§ 121), since the national government has control of those products only which are shipped from State to State, or are intended for export. The most prominent part of the work is performed at the great *packing houses*. Before 1906 very little attempt was made to provide for careful inspection, but under the meat inspection law of that year the number of inspectors has been greatly increased, and there is careful examination of the animals before they are killed and of the meats afterward. The inspectors may condemn meats that are unsatisfactory, the approved product being marked "U. S. inspected and passed." In the canning and preserving rooms especial care is taken to maintain cleanliness and encourage the use of the most modern methods.

Pure Food  
Act of 1906.

*Inter-  
national  
Year Book*  
(1907),  
271-275.

Under the Pure Food Act of 1906 *drugs* cannot be sent from one State to another unless they meet the tests prescribed by the United States *Pharmacopœia*. *Foods* must not contain injurious substances and must be accurately described by their labels. The regulations for the enforcement of this far-reaching law are quite strict, and the influence of the law, together with the state laws (§ 121) to

which it led, cannot easily be estimated, as most manufacturers voluntarily and cheerfully followed the direction for pure food and the publicity of ingredients. The *relative food values* of different articles have been determined by chemical analysis and by experimentation in numerous agricultural stations and with Dr. Wiley's famous "poison squads."

**289. Protection against Storms and Floods.**—The services of the Weather Bureau in forecasting storms and preventing unnecessary loss to growing crops or to coast trade is so well known as to require little comment. There are located at about two hundred stations regular observers, who report twice daily to some central office the meteorological conditions in their vicinity. At these central or district offices men are constantly employed comparing the reports and sending out general and local *forecasts*, which are distributed by mail as quickly as possible. Reports from these district stations are sent to the main office at Washington, where they are in turn compared by experts, who at once send out forecasts to the different stations. Reports on the conditions of climate and crops are received weekly from about fourteen thousand persons, national and state crop bulletins being issued as soon as convenient afterward.

Most of us appreciate the importance of the weather forecasts made by the Weather Bureau, though we frequently see only the failure to indicate the exact changes of temperature for our locality. We do not always realize the immense saving to those engaged in agriculture of warnings of floods, droughts, or storms, nor the value to those who are shipping merchandise from port to port on the lakes or seacoast, if notified that a storm is brewing.

Organization and methods of the Weather Bureau.

Gauss, *Am. Gov't*, 757-764.

Value of its work.

Moore, W. L., in *Forum*, 25 (1898), 341-353.

Grosvenor, G. H., in *Century*, 70 (1905), 161-178.

## OTHER ACTIVITIES

**290. Immigration.**—One of the essential duties of every national government is that of regulating the immigration Importance.

Mayo-Smith, *Emigration and Immigration*, 1-11.

Present laws.

Gauss, *Am. Gov't*, 803-807.

Hall, *Immigration*, 339-355.

Change in character of immigrants.

Commons, *Races and Immigrants*, 68-106.

Administration of the immigration laws.

Need of a wise naturalization policy.

of foreigners. The admission of aliens belonging to the same race as the natives is ordinarily an important cause of national progress. Just as necessary is the exclusion of *undesirable persons* of the same race, of classes that represent *ideas especially dangerous* to the country to which they come, and of foreigners who belong to *radically different races* who are accustomed to a standard of living that will undermine the economic and social institutions in the land of their proposed adoption.

At present all Chinese laborers, idiots, paupers, and persons with contagious diseases or under contract to work in competition with American labor, are excluded from entering the United States. The *number* of immigrants is nevertheless very large, 1,285,349 persons being admitted in 1907, and only about 1 per cent of that number being sent back. The next year, however, the *net* immigration fell to less than 100,000, showing the influence of the hard times of that year. The *character* of the immigrants is unfortunately less satisfactory than two decades ago, and even more stringent laws have been proposed.

The number of German immigrants decreased from 109,717 in 1887 to 37,807 in 1907. During the same period the number of inhabitants coming from Austro-Hungary, Russia, and Italy rose from 131,856 to 883,126. While the second generation of these latter peoples will probably be capable of assimilation with Americans, the older immigrants are unable to drop their former customs and habits.

Ships coming from Europe are met by inspectors who make as careful a medical examination as seems necessary. Applicants for admission are taken to the immigration stations and cared for by the government until the officials are satisfied that they do not belong to any of the excluded classes. As the steamship companies are compelled to take back those who are debarred from entering the United States, each transportation line makes some examination of the immigrants before leaving Europe.

**291. The Process of Naturalization.**—The status of these new Americans—their legal position, their rights in regard to the holding of property and exercising political privileges,



MAIN WAITING ROOM, IMMIGRATION BUILDING, NEW YORK CITY



ELLIS ISLAND IMMIGRANT STATION



and, more than all else, the conditions under which they shall be admitted as full citizens — constitutes another subject of vital importance. Except for four years<sup>1</sup> (1798–1802) our policy always has been to admit foreigners to citizenship after a very short period of residence in order that they may identify their interests with ours. In addition to this *individual naturalization*, we may have *collective naturalization*, the latter occurring when a large number of foreigners are made citizens by a single act, such as a treaty or Amendment XIV of the Constitution.

Under the present naturalization act, passed in 1870, only persons of the white or the negro race may be naturalized, and *these can become citizens only after a residence of five years in this country*. The process includes two important steps: (1) The applicant for citizenship must first declare, before some court of record, that he intends to become a citizen of the United States, that he will support the Constitution, and must renounce his previous allegiance to any foreign State or sovereign. (2) Not less than two years after making this declaration, he must prove before a similar court by means of witnesses that he has resided in this country at least five years, and has conducted himself properly. He then renounces his allegiance to his former sovereign and swears to support the Constitution. His wife and minor children become citizens without further formalities.

As in the case of many other American laws, those connected with naturalization have been enforced laxly. In addition there has been an immense amount of fraud in the form of forged papers or of genuine papers sold by bribed officials contrary to the law. It is estimated by one investigator that more than one million fraudulent or defective

Methods under present law.

Hunt, G., in *No. Am. Rev.*, 185 (1907), 530–539.

Rossiter, W. S., in *Rev. of Revs.*, 35 (1907), 469–471.

Carelessness and fraud in issuing papers.

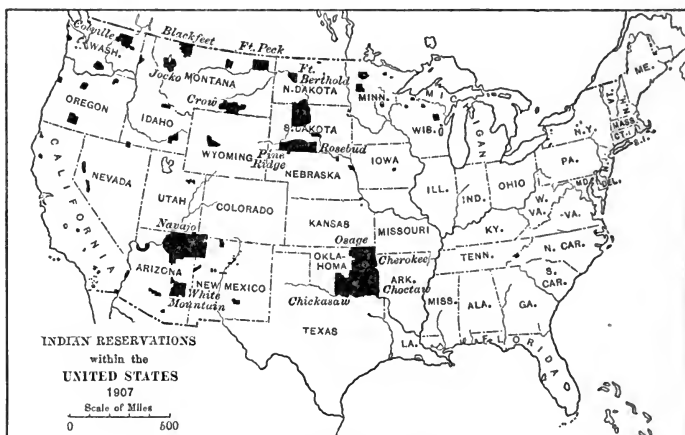
Cooley, A. W., in *Rev. of Revs.*, 37 (1908), 464–467.

<sup>1</sup> The law of 1798 required a residence of fourteen years before an alien could become a citizen, but it lapsed in 1802, and five years has been the time required since, although attempts have been made to lengthen or shorten the period.

papers are in existence. During recent years the government has taken steps to prevent the repetition of these serious evils, and at present the laws are being enforced strictly.

Reservations.  
Indian  
agents.

**292. Indian Affairs.**—The duty of our people to the red men who have been driven back by each succeeding wave of Western advance has not received the attention it deserves. Until 1871, the relations with Indian tribes were arranged



INDIAN RESERVATIONS

Fairlie,  
*National Adminis-  
tration*,  
197-204.

Grinnell,  
G. B., in  
*Atlantic Mo.*,  
83 (1899),  
255-267.

in treaties which were broken quite frequently. The tribal Indians have since been considered wards of the nation, and have had certain rights to lands on *reservations*. Indian affairs now are intrusted to a Commissioner who looks after the lands, schools, and moneys of all tribes except those that by former treaties are free to care for their own welfare. The government appoints Indian agents who oversee the distribution of funds and the allotment of lands, hear complaints, and have general charge of Indian affairs, great and small. The success of the present system depends to a very great degree upon the character and judgment of these agents, many of whom are conscientious, capable men, al-



though they are often appointed for other reasons than their qualifications. A commission of ten members who devote their time without pay has done much to improve the Indian service by investigating and recommending improvements.

On the reservations<sup>1</sup> schools are now supported by the government, aid in the form of food, clothing, cattle, and agricultural implements is given regularly, and the encroachments of mercenary whites are prevented as far as possible. The problems of education and civilization are being dealt with in an honest spirit, and an attempt is being made to solve them by making the Indian a citizen, giving him land of his own, and training him in some suitable line of work. Some of the Indians have proved their ability to keep afloat in the struggle for existence, but their character, training, and treatment by Americans have not prepared them for the life of the white man.

Aid given.

**293. Patents and Copyrights.**—In order to encourage the invention of new mechanical devices, Congress permits the Patent Bureau to issue to inventors patents which grant them the exclusive right to manufacture and sell the patented device for a period of seventeen years.<sup>2</sup> The influence exerted by this system in improving the mechanical methods used in almost every branch of business in the United States cannot be overestimated.

Protection of inventions.

Kent, E. E., in *Technical World*, 5 (1906), 420 *et seq.*

The issuing of copyrights is intrusted to the Librarian of Congress, to whom application must be made, and with whom two copies of each book or drawing are left for the Congressional Library. The fee is only \$1, but the exclusive right of publication is granted for a term of twenty-

National copyright.

<sup>1</sup> In 1900 it was estimated that there were 270,544 Indians in the United States, of whom 86,265 lived in what was called "Indian Territory." One sixth of these were able to read, and about the same number held land "in severalty." In 1902, 24,434 children received instruction in the government schools, over \$3,500,000 being devoted to this work.

<sup>2</sup> The number of patents granted for inventions from July 28, 1836, when the Bureau was established, to Dec. 31, 1906, was 849,755.

eight years with the privilege of renewal for fourteen years longer.

Inter-  
national  
copyright.

By the act of March 3, 1891, foreign authors are permitted to copyright books and other articles in this country provided their government gives the same privilege to American writers, and provided, further, that the books or drawings are actually printed in the United States.

Process of  
obtaining  
patents.

Kent, E. E.,  
in *Technical  
World*  
5 (1906),  
576-579.

The applicant for a patent must file a very specific written statement showing the exact character of the device, accompanied by drawings and models when necessary. At the same time, he takes oath that he is the actual inventor of the art or machine, and that to his knowledge it has never been patented before. When this application is made, a fee of \$15 is paid, a further fee of \$20 being required if the patent is granted.

Library of  
Congress.

The library of Congress contains a great many valuable books and manuscripts in addition to those left according to copyright laws. These are invaluable to students and to congressmen who wish to gain information on United States history especially. In 1907, the library contained 1,433,848 books and pamphlets. Since 1897, the library has been located in a separate building, which is a very handsome piece of architecture.

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2. THE GOVERNMENT AND THE INDIANS: Price, H., in *Forum*, 10 (1891), 708-715; Kyle, J. H., in *North American Review*, 159



CONGRESSIONAL LIBRARY, WASHINGTON



LIBRARY ENTRANCE



ENTRANCE HALL



(1894), 434-447; Abbott, L., in *North American Review*, 167 (1898), 719-728; Grinnell, G. B., in *Cosmopolitan*, 26 (1899), 537-548; *Outlook*, 68 (1901), 349-351; 70 (1902), 217-222, 759-765, 951-958; 71 (1902), 90-96; 74 (1903), 738-742; 75 (1903), 164-166; 76 (1904), 498-501; 83 (1906), 315-319.

### Studies

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3. The work and needs of our largest post office. Van Norman, L. E., in *Review of Reviews*, 33 (1906), 580-591.
4. Rural Free Delivery. Bush, R. F., in *North American Review*, 182 (1906), 381-390; Cortelyou, G. B., in *Independent*, 61 (1906), 303-307; Hawkins, R. C., in *North American Review*, 181 (1905), 886-896.
5. Uncle Sam's romance with science and the soil. Vrooman, F., in *Arena*, 34 (1905), 561-568; 35 (1906), 36-46, 159-163.
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7. Instruments of the weather service. Dodge, C. R., in *World To-day*, 11 (1906), 1204-1210.
8. Social aspects of immigration. Hall, *Immigration*, pp. 139-182.
9. Economic results of immigration. Mayo-Smith, *Emigration and Immigration*, pp. 93-122.
10. A day at the immigration building. Henry, A., in *Scribner's Magazine*, 29 (1901), 301-311.
11. Americanization of the immigrant. Huebner, G. G., in *Annals of American Academy of Political Science*, 27 (1906), 653-675; Commons, *Races and Immigrants in America*, pp. 198-238.
12. Curiosities of the patent office. Bache, R., in *Cosmopolitan*, 43 (1907), 151-156.
13. The National Bureau of Standards. Wade, T., in *Engineering Magazine*, 36 (1908), 1-22.

### Questions

1. How many assistant postmasters-general are there? Which one looks after the letting of contracts? free deliveries? appointment of fourth-class postmasters? issuance of stamps? (*Congressional Directory*.)

2. What rates are charged for each class of mail matter? What would it cost to send a one-ounce letter to Montreal? to the city of Mexico? to Paris? to London? What would it cost to send a five-ounce *parcel* to London? to Berlin? (Newspaper Almanacs.)

3. Under what class does each of the following come: a photograph? a handkerchief? manuscript of a poem? books in series published monthly? hectograph circulars? a package of seeds? (Newspaper Almanacs.)

4. Who has charge of the issuance of patents? of copyrights? of seed distribution? (*Congressional Directory*.)

### Powers of Congress

The student may summarize and review the powers of Congress by amplifying the following outline:—

#### 1. GENERAL.

##### (1) Powers affecting States:

- a. Admission, § 274 (Constitution IV, § 3, cl. 1),
- b. Guarantee of republican form of government, § 202 (IV, § 4),
- c. Administrative regulations (I, § 4, cl. 1; § 10, cl. 2; II, § 1, cl. 3; IV, § 1).

##### (2) Powers affecting citizenship:

- a. Uniform naturalization laws, § 291 (I, § 8, cl. 4),
- b. Protection of constitutional rights, § 204 (Amendment XIV, § 1),
- c. Regulation of immigration, § 290 (I, § 8, cls. 3, 18).

##### (3) Powers affecting Constitution:

- a. Amendments, § 197 (Art. V),
- b. Enforcing provisions of (I, § 1, Amendments XIII, § 2; XIV, § 5; XV, § 2).

##### (4) Powers affecting organization of government:

- a. Other departments in general, § 314,
- b. Vacancies in presidency, § 324 (II, § 1, cl. 5),
- c. Inferior courts, § 348 (I, § 8, cl. 9),
- d. National elections, §§ 304, 308, 319 (I, § 4, cl. 1; II, § 1, cl. 4),
- e. Appointment of minor officers, §§ 44, 326 (I, § 2, cl. 3).

#### 2. FINANCIAL POWERS.

##### (1) Taxation (Art. I, § 8, cl. 1; § 7, cl. 1):

- a. Historical use of, §§ 243, 246, 247,

- b. Duties on imports, §§ 236, 244 (I, § 8, cl. 1 ; § 9, cl. 5),
- c. Excise taxes, § 245 (I, § 8, cl. 1),
- d. Direct taxes, § 247 (I, § 8, cl. 1 ; § 9, cl. 4),
- e. Miscellaneous taxes, §§ 246, 247 (I, § 8, cls. 1, 18 ; § 9, cl. 4).
- (2) Public credit. Borrowing money by (I, § 8, cl. 2) :
  - a. Issuing bonds, § 251,
  - b. Issuing treasury notes, § 252 (I, § 8, cl. 18).
- (3) Other possible revenue :
  - a. Sale of public lands, §§ 8, 275-279 (IV, § 3, cl. 2),
  - b. Profit from business :
    - (a) post office, § 280 (I, § 8, cl. 7),
  - c. Fees, etc., §§ 290, 291, 293.
- (4) Expenditure of public money :
  - a. General, §§ 248, 250 (I, § 8, cls. 1-18 ; IV, § 3, cl. 2),
  - b. According to legal appropriations, § 250 (I, § 7, cl. 3 ; § 9, cl. 7),
  - c. For army (I, § 8, cl. 12).

### 3. COMMERCIAL POWERS.

- (1) Foreign commerce (I, § 8, cl. 3) :
  - a. Promotion of, §§ 232-235 (I, § 8, cls. 1, 3, 18),
  - b. Limitations on imports, § 236 (I, § 8, cls. 1, 3, 18).
- (2) Interstate commerce :
  - a. Aid to, § 259 (I, § 8, cls. 1, 3, 18 ; IV, § 3, cl. 2),
  - b. Regulation of, §§ 260-262 (I, § 8, cl. 3),
  - c. Regulation of industry connected with, §§ 263, 264 (I, § 8, cls. 1, 3, 18).
- (3) Business regulations :
  - a. Money :
    - 1. establish money standard, §§ 254, 255 (I, § 8, cl. 5),
    - 2. coin money, §§ 256, 258 (I, § 8, cls. 5-6),
    - 3. permit national bank notes, § 257 (I, § 8, cls. 1, 5, 18).
  - b. Uniform bankruptcy laws, § 253, note (I, § 8, cl. 4).
  - c. Uniform standards of weights and measures (I, § 8, cl. 5).
  - d. Protection of inventors and copyrights, § 293 (I, § 8, cl. 8).

### 4. TERRITORIAL POWERS.

- (1) Acquisition of territory, § 266 (I, § 8, cls. 1, 18 ; IV, § 3, cl. 2).
- (2) Government of territory (IV, § 3, cl. 2) :
  - a. Absolute temporary power, §§ 267-270,
  - b. Limited regular power, §§ 272-273,
  - c. Permanent control over (I, § 8, cl. 17) :

1. Seat of government, § 271,
2. Public buildings and works.
- (3) Admission of new States, § 274 (IV, § 3, cl. 1).
- (4) Public lands (I, § 8, cl. 1; IV, § 3, cl. 2):
  - a. Use for bounties or revenue, § 275,
  - b. Disposal for public benefit, §§ 275-278,
  - c. Administration, § 279.
5. MILITARY POWERS.
  - (1) Declare war, § 237 (I, § 8, cl. 11).
  - (2) Provide for defense:
    - a. General, §§ 237, 241 (I, § 8, cl. 1; IV, § 4),
    - b. By raising an army, § 238 (I, § 8, cls. 12),
    - c. By providing a navy, § 240 (I, § 8, cl. 13),
    - d. By controlling the militia, § 239 (I, § 8, cl. 15).
  - (3) Administration of military affairs, §§ 238-242 (I, § 8, cls. 11, 14, 16).
6. OTHER POWERS.
  - (1) Indian affairs, § 292 (I, § 8, cl. 3).
  - (2) Punishment of crime (I, § 8, cls. 6, 10, 18; III, § 3, cl. 1).
  - (3) General. **Elastic Clause** (I, § 8, cl. 18).
  - (4) Agricultural development (§§ 284-286).
  - (5) Protection of food supply (§§ 287-289).
7. LIMITATIONS ON CONGRESS.
  - (1) Prohibitions:
    - a. Commerce — exports (I, § 9, cl. 5),
    - b. Individual:
      1. unjust punishment (I, § 9, cl. 3; III, § 3, cl. 2; Amendments VIII, XIII).
      2. freedom, § 199:
        - (a) civil (Amendments I-IV),
        - (b) religious (Art. VI, cl. 3, Amendment I),
        - (c) in trials (Amendments V-VII).
      3. titles of nobility (I, § 9, cl. 8).
  - (2) Special limitations:
    - a. Financial:
      1. direct taxes (I, § 9, cl. 4).
      2. appropriations (I, § 8, cl. 12; § 9, cl. 7).
    - b. Commercial — uniform regulations (I, § 9, cl. 6).
    - c. Personal:
      1. *habeas corpus* (I, § 9, cl. 2).
      2. general personal (Amendment V).



## CHAPTER XXIII

### CONGRESSIONAL METHODS

#### CONGRESSIONAL REGULATIONS

**294. The Organization of Congress.**—The Congress of the United States, like the legislatures of the States, is composed of two houses, one of which is much larger than the other. Unlike the state legislatures, the houses of Congress are radically different in character, as the Senate, or upper house, represents the *States*, each State having two senators chosen by its legislature, whereas the members of the House of Representatives are chosen by the people of the Nation from districts of nearly equal population. It will be remembered (§§ 185–187) that the Constitutional Convention of 1787 was at no time in favor of having a single-chambered Congress, as that of the Confederation had proved so unsatisfactory, while the state legislatures were quite vigorous. Yet the real difference between the Senate and the House in composition was less the result of planning and experience than of the compromise between the large and the small States (§ 187). This compromise—a necessary part of the convention's work—has probably given us the best possible kind of a national legislature, because the two houses are sufficiently unlike to prevent hasty and ill-considered legislation and to represent properly the varied interests of our Republic.

Difference  
between  
houses.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
138–140.

At the first meeting under a new Congress, the Senate swears in the members last elected, and proceeds with its old committees and former rules under the chairmanship of the Vice President, until the new committees have been arranged (§ 305).

The Senate.

In the House the organization is a little more elaborate. The clerk of the previous House calls the roll of all of those holding certificates of election, and, if a quorum is present, the House proceeds to swear in its new members, and to elect its Speaker and other officers. When both houses are organized, the President is notified, and his annual message is read before the separate chambers. With the appointment of its committees by the Speaker, and the adoption of a set of rules, the House is, equally with the Senate, prepared for actual work.

The House.

Life of a Congress.

**295. The Sessions of Congress.**—Whenever a House of Representatives gives place to a new House, once in two years, we have a *new Congress*. For example, the Fifty-seventh Congress lasted from March 4, 1901, to March 4, 1903, being replaced on the second date by the Fifty-eighth.

Long and short sessions.

*Constitution*, Art. I, § 4, cl. 2.

*Each Congress has two regular sessions*, one of which begins on the first Monday of December after the Congress comes into existence, and continues into the following summer until the chief bills have been passed or postponed. This is called the *long session*.<sup>1</sup> The second or *short session* begins on the first Monday of December following adjournment, and closes the Fourth of March, when the Congress expires by limitation.

A serious defect.

The members of the House of Representatives are elected on the Tuesday after the first Monday of November in the even-numbered years, and cannot meet until the next Fourth of March. Ordinarily they do not come together until December of the next year. There seems to be a serious need of changing either the time of the election or the date of meeting for Congress. Many things happen nowadays in thirteen months; new questions may arise or the feeling of the people may change. Furthermore, there is no good reason why one session of every Congress should be held after its successor has been elected. If the new Congress is very different from its predecessor, the old one is confronted with the problem of leaving legislation untouched or of enacting laws in accordance with a policy that the people have just repudiated at the polls.

The President and special sessions.

*Constitution*, Art. II, § 3.

General.

*Constitution*, Art. I, § 5, cls. 1, 2.

*Special sessions of Congress*<sup>2</sup> may be called only by the President, and not by request of members of the legislature as in most of the States, unless Congress adjourns to meet at a date earlier than the first Monday of December. Special sessions are not common, but at times new laws are so imperative that the President issues his proclamation summoning a special session for a date named, and giving his reasons for calling the session.

**296. Provisions Common to Both Houses.**—*Each house controls its internal organization*, being authorized by the Constitution to make its own rules, elect its own officers, decide who are elected

<sup>1</sup> If the houses of Congress fail to agree upon a time for final adjournment, the President is authorized by the Constitution to set a date at which the session ends, but his services have never yet been required.

<sup>2</sup> Special sessions of the Senate without the House are called immediately after the inauguration of a President to confirm his appointments for cabinet and other positions. They may also be held to act upon treaties of importance.

members, punish members for disorderly behavior, and compel the attendance of a quorum to do business.

Each house has a Committee on Rules to which all proposed changes are submitted. The Senate always uses the rules of the preceding session, but the House must formally adopt rules before they can be applied, although few changes occur from one Congress to another. Rules.

The officers of the houses are elected at the beginning of each Congress and hold office during the sessions of that Congress. Officers.

Both the Senate and the House have committees on elections that hear the evidence in disputed cases and report to the houses which of the contestants is entitled to a seat. Contested elections.

Each house may punish a member for disorder, but even in flagrant cases the punishment is likely to be mild, reprimands being given on occasion, but suspensions very rarely. Two thirds in either house may expel a member, but cases of expulsion are almost unknown. Expulsion of members.

No business can be transacted in either house unless a majority of its members, the constitutional quorum, is present. If less than half are in attendance, they may either adjourn or authorize the sergeant-at-arms to compel the others to attend. Neither house is allowed to adjourn more than three days without the consent of the other. At the close of a long session, the date for final adjournment is usually fixed by agreement without great difficulty. The attendance of members. Adjournment.

In order to insure a complete record of what is done in Congress, the Constitution provides that "each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy." At present we have a daily paper called *The Congressional Record*, which contains a full report of all speeches delivered, and some others prepared by congressmen, and a biweekly Journal which gives a summary of all bills introduced and all votes taken. *Constitution*, Art. I, § 5, cls. 1, 4.  
*Cong. Record.*  
*Constitution*, Art. 1, § 5, cl. 3.

**297. The Privileges and Disabilities of Members.**— When the English Parliament was struggling to limit the power of the King, centuries ago, the King was often able to defeat their wishes by arresting the leaders of the opposition. Since the contest between Parliament and the Stuarts, which ended in the complete victory of the former, members of Parliament have been free from interference by the King or his ministers. Some of these privileges were claimed by the legislators in the colonies, and are now granted to Congressmen and our state legislators by the constitutions. Members of Congress are "in all cases except treason, felony, and breach of the peace privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same, and for any Special privileges.

*Hart, Actual Gov't*, § 107.

*Constitution*, Art. I, § 6, cl. 1.

speech or debate in either house they shall not be questioned in any other place."

Compensation of congressmen.

*Constitution*, Art. I, § 6, cl. 1.

Fuller,  
H. B., in *No. Am. Rev.*,  
188 (1906),  
539-551.

Disabilities of congressmen.

*Constitution*, Art. I, § 6, cl. 2.

Members of Congress receive from the Treasury of the United States a salary of \$7500 a year besides traveling expenses—"mileage" of 20 cents a mile.<sup>1</sup> Extra compensation is granted in the form of allowances for clerks, for free delivery of mail upon public business, allowance of money for stationery, and of large numbers of government publications and quantities of free seeds. Yet with all these perquisites of office, our congressmen are so underpaid that few business men can afford the luxury of holding the position. The shortsightedness of this policy is self-evident.

Great was the dread among the members of the convention which framed the Constitution that congressmen might be drawn from the plain path of duty. They accordingly inserted in the Constitution this clause, "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States, shall be a member of either house during his continuance in office."

## THE PROCESS OF LAWMAKING

Bills and laws.

Spofford,  
A. R., in  
Lalor's  
*Cyclopedia*,  
III, 71-94  
(esp. 75, 76).

**298. The Early Stages of Legislation.**—In its earliest form, a law is either a bill or a joint resolution, introduced in the Senate or the House by some member.<sup>2</sup> About one bill in eight is fortunate enough to be enrolled as a part of the law of the land. Most of them never reach a second reading, which means that they are never read at all; for, when a member introduces a bill in either house, the clerk or secretary reads only the title, the bill being immediately "committed." It is then likely to be "killed in committee."

<sup>1</sup> The Speaker of the House and the president *pro tempore* of the Senate receive \$12,000 each per year.

<sup>2</sup> Members are not allowed to introduce bills when they please, for the houses are too busy to consider new bills except on stated days. In the House, for example, new bills must be introduced upon the first and third Mondays of each month. If a member has a bill to bring before the House, he takes it on those days to the desk of the Speaker or the clerk, and has the pleasure of listening to the reading of the title when the roll of the States is called.



From stereograph, copyright, 1906, by Underwood and Underwood, New York.

THE HOUSE OF REPRESENTATIVES IN SESSION



If the bill has enough friends, or is of sufficient importance, it is in time reported back by the committee to the House and placed upon the "calendar," after being read the second time. The committee may have altered the original measure so as to destroy all of its essential features, and it may be further changed when an opportunity is given later for debate and amendment, before the third reading and final vote. Bills are not, however, taken from the calendar in regular order, as appropriation bills and others of particular importance may be reported and discussed at any time. In the House, bills are taken from the calendar for consideration in the order prescribed by the Committee on Rules (§ 310).

Reports of bills.

McConachie, *Cong. Committees*, 195-204.

The chief difference between the methods of the Senate and the House is observed in connection with the discussion of proposed laws. The House allows comparatively little debate, no one being permitted to speak who has not first obtained the consent of the Speaker or of the chairman of the committee in charge of the bill, for the Speaker gives the privilege of the floor to those only whom he wishes to recognize. According to the rules of the *House*, *debate may be closed at any time* by having one of the supporters of the bill move the "previous question," which gives the majority an opportunity to decide whether a vote shall be taken upon it at once.

Debate in the House.

Hart, *Actual Gov't*, § 116.

In the *Senate*, on the contrary, *there is no rule limiting debate*, which has often continued for weeks upon some important bill, as in the spring of 1902, on the one establishing a Civil Government for the Philippine Islands. This gives the minority an opportunity to delay action, by "filibustering," as it is called, a method that is now impossible in the House.

Debate in the Senate.

**299. The Taking of a Vote.**—When a bill has been read for the third time, the vote upon it may be taken in one of three ways, a majority of those *present* being necessary for its passage. (1) The usual method is to call for the *ayes* and *noes*, the presiding officer deciding from the sound whether the measure has passed. (2) When the result is in doubt, or a member asks for a *rising vote*, this is taken

The three methods.

Hart, *Actual Gov't*, § 117.

H. R. 15006.

WHITE HOUSE  
JAN 20 1903  
RECEIVED.*Fifty-seventh Congress of the United States of America;**At the Second Session,*

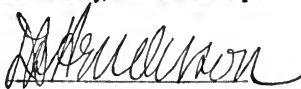
Begun and held at the City of Washington on Monday, the first day of December, one thousand nine hundred and two.

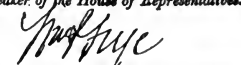
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AN ACT

To establish Portal, North Dakota, a subport of entry and extend thereto the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Portal, North Dakota, be, and is hereby, designated a subport of entry in the customs collection district of North and South Dakota, and that the privileges of the first section of the Act approved June tenth, eighteen hundred and eighty, entitled "An Act to amend the statutes in relation to the immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to said subport.*

  
*Speaker of the House of Representatives.*

  
*President of the Senate pro tempore.*

*Approved,  
January 22, 1903.*

*Theodore Roosevelt*



and each side is counted. (3) If one fifth of the members wish to have the *roll call*, the clerk reads the names alphabetically, the vote of each being recorded. When the roll is called unexpectedly, there is always an interesting hunt for the members of the House who may be in the building, but not in the legislative hall.

An active canvass for votes may be necessary in order to insure the passage of a measure. Votes for one bill are often secured by promising support for another, a practice known as "log rolling." It is safe to say that earnest personal appeal exerts more influence than public debate. With party measures which fail to interest all the members of the dominant party, various tactics are employed to gain the support of those likely to oppose the bill. Among the means used to this end, the most effective consists in holding a caucus of all the party members belonging to the House. If the caucus indorses the bill, a full party vote is assured, as few men will vote against their party under such circumstances.

Ways of  
securing  
votes.

Hart, *Actual Gov't*, § 115.

Lodge, *Hist. and Pol. Essays*, 169-179.

A kind of "filibustering" used on former notable occasions is now forbidden by the rules of the House. As organized in December, 1889, the House contained a very small majority of Republicans, and, owing to the absence of several members, Speaker Reed was able to obtain a quorum only by counting Democrats who were present, but who refused to vote. This action was opposed at the time with great vigor, and gave the Speaker the title of "Czar Reed," yet ever since members present but not voting have been counted.

Organiza-  
tion of the  
House,  
LI Congress.

**300. The Bill in the Second Chamber.**—When a bill has been passed by one house and signed by the presiding officer of that body, it is sent to the other chamber where the three readings, the reference to a committee, and the discussion will be repeated. If it is approved by this house *without alteration*, it is signed and sent to the President, but if amended in any particular, it must be returned to the house which passed the original bill, because the measure must be adopted by the two houses in exactly the same form.

Unaltered  
bills.

Substitute  
bills.

The second house may even go so far as to substitute for the original bill an entirely different one relating to the same subject. This was done by the Senate in the closing days of the first session of the Fifty-seventh Congress, in regard to an interoceanic canal. The House bill provided for the construction of a canal across Nicaragua, and the Senate substituted the Panama route, with the proviso, that, if no clear title could be obtained to the Panama route, the President should be authorized to construct the canal by way of Nicaragua. Strangely enough, the Senate bill passed the House by an overwhelming majority, but in such cases it is usually necessary to resort to a conference committee.

Conference  
committees.

A conference committee is composed of an equal number of members from each house of Congress, selected for the sole purpose of reconciling the differences between the Senate and House bills upon a particular subject. Each chamber usually selects three of its best men as its representatives, choosing those who have been most interested in its bill. The conference committee may select the Senate or House bill *in toto*, but this is unusual. The compromise bill reported by the committee is very often accepted by both houses without discussion or amendment, although a second conference may be required, or the bill may be defeated in one or both houses.

McCona-  
chie, *Cong.*  
*Committees*,  
245-254.

The ordi-  
nary veto.

*Constitu-  
tion*, Art. I,  
§ 7, cls. 2, 3.

Bryce, *Am.*  
*Common-  
wealth*,  
abr. ed.,  
163-165.

**301. The Presidential Veto.**—When a bill has been presented to the President for his signature, he is allowed by law ten days, exclusive of holidays and Sundays, in which to sign it. If he fails to sign it or return it to Congress within that time, it becomes a law without his signature. Bills which he disapproves are returned to the house in which they originated, with a message giving the reasons for his *veto*. A vetoed bill must command a *two-thirds* vote in each house before it becomes a law. This majority very few measures can obtain, especially with the weight of the President's disapproval against them. In fact, but one bill

was passed over the President's veto before 1866, although we must remember that the chief executives of those days were much more chary of using the veto than in these later times, when Congress enacts laws with greater haste.

A bill passed less than ten days before the adjournment of Congress does not become a law unless actually signed by the President. Neglect in cases of this kind is equivalent to a veto, the name *pocket veto* being popularly applied to the practice. On account of the large number of bills which are passed during the closing days of a session, the President may be able to exercise an undue influence upon legislation. Many of these bills are, however, hastily drawn and ill-considered, so that on the whole their failure does not injure the public.

**302. The Committee System.**—The most distinctive feature of congressional procedure is the use of committees in making laws. The committees<sup>1</sup> are the center and life of Congress, doing the larger part of the work in framing important bills,—although these may be actually introduced by individual members,—in investigating subjects before either house, and in concentrating the discussion in the chambers upon a few vital questions. *The House places a much greater dependence upon committees than the Senate,*<sup>2</sup> as

The pocket veto.

Importance of the committees.

Hart, *Actual Gov't*, § 109.

Bryce, *Am. Commonwealth*, abr. ed., 115-119.

<sup>1</sup> The committees are usually composed of from ten to fifteen members, some having as few as three, and others, in the House, as many as eighteen, the largest Senate committee numbering seventeen. The majority of each committee belongs to the dominant party, except for a few unimportant Senate committees; but every member of the House is on at least one committee, and every senator is assigned to not less than four. A few representatives are connected with three or even four committees, and many senators work on six or seven.

In the House, the committees are selected by the Speaker, and in the Senate the appointments are made by the whole Senate (§ 305). In both houses, the member whose name appears first on the list of committeemen is the chairman.

<sup>2</sup> The House of Representatives has two Committees of the Whole, one of which deals with financial bills and the other with private bills. When the House resolves itself into a Committee of the Whole, the Speaker always calls some one else to the chair, as he sometimes does in the House proper. But the presiding officer cannot make any one attend the com-

it is much larger. Standing committees have been used in the House from the beginning, whereas the earliest permanent committee of the Senate dates from 1816.

The commitment of bills.

McConachie, *Cong. Committees*, 116-121.

So numerous are the committees that their duties frequently overlap. Many bills may, therefore, be assigned to any one of two or more committees. There is often a sharp contest between chairmen for the control of important measures, and, as the different committees would be likely to make very different reports, the right to decide which shall have it is of the first importance. In the House, this power belongs to the Speaker, but, in the Senate, it is reserved by the chamber, although ordinarily exercised by the presiding officer.

Committees at work.

McConachie, *Cong. Committees*, 56-86.

The committees usually hold their meetings upon certain mornings, many of them having separate rooms for this purpose. The sessions are supposed to be secret, but are not strictly so, although no records of their proceedings are published. Most of the work at these meetings is done by the members of the majority, whose leaders, in fact, often arrange all important details beforehand. Subcommittees are frequently appointed to examine and report upon special features of a bill. In the regular sessions, the committees hear the reports of individuals or of these subcommittees, listen to the statements of business men whose line of work would be affected by the committee's action, examine experts, confer with subordinate officials of some executive department of the government, and discuss the bills under consideration.

mittee, neither does he have the right to maintain order by force. The quorum, instead of being one half the members, is only one hundred. As sessions of the Committees of the Whole are held for the express purpose of debating proposed laws, speech is not subject to the same limitations as in the House. When a committee has finished the business in hand, it rises and reports to the House, which is in no way bound by the action of the committee.

### General References

- James and Sanford, *Government in State and Nation*, pp. 166-181.  
Bryce, *The American Commonwealth*, abridged ed., 108-130, 140-142, 163-165.  
Hart, *Actual Government*, pp. 215-257.  
Spofford, A. R., "Parliamentary Law," in Lalor, *Cyclopedia*, III, pp. 71-94.  
Wilson, *Congressional Government*, pp. 64-129.  
McConachie, *Congressional Committees*.

### Topics

THE VETO POWER: Bryce, *American Commonwealth*, abridged ed., pp. 41-44, 163-166; Harrison, *This Country of Ours*, pp. 126-134; Johnson, A., in Lalor, *Cyclopedia*, III, pp. 642-645, 1064-1067; Mason, *Veto Power*.

### Studies

1. The bicameral legislature in history. Wilson, *The State*, §§ 375, 794, 848-853.
2. Making laws in Washington. Nelson, H. L., in *Century Magazine*, 64 (1902), 169-187.
3. The House at work. Bryce, *American Commonwealth*, abridged ed., pp. 108-114; Reed, T. B., in *North American Review*, 164 (1897), 646-650.
4. Humors of Congress. Leupp, F. E., in *Century Magazine*, 65 (1903), 760-768, 938-945.
5. A Committee of the Whole. McConachie, *Congressional Committees*, pp. 92-101.
6. The vetoes of President Johnson. Burgess, *Reconstruction and the Constitution* pp. 66-73, 88-90, 122, 126-133, 140-142.

### Questions

1. What is the number of the present Congress? When were the representatives chosen? When does their term of office expire?
2. What was the longest single session of Congress? What was the length of the last "long" session? When was the last extra session called? (Manuals of the House, under "Congress, Sessions of.")
3. Select some bill under consideration at the most recent session of Congress, and learn when it was first introduced, to what committee

it was assigned, when it was reported, how long it was debated, and the final vote upon it within that chamber.

4. Were any important bills given to conference committees at the last session? Were any vetoed by the President?

5. To what House committees would the following bills naturally be assigned (in case it might appropriately be given to more than one, name all): Isthmian Canal bill; bill appropriating \$50,000 for a public building; a pension bill; a bill enlarging the powers of the Interstate Commerce Commission; amendment to the Constitution; a bankruptcy bill; a resolution to admit Porto Rico as a State; a tariff bill for the Philippine Islands; a bill for revising the law of copyright; for granting land to a transcontinental railway? (List of committees in *Congressional Directory*; duties of committees in Senate and House Manuals.)

## CHAPTER XXIV

### THE HOUSES OF CONGRESS

#### THE SENATE

**303. General Character of the Senate.** — The Senate of the United States is one of the smallest and most satisfactory national legislative bodies in the world. It is composed of two members from every State, all of whom must be at least thirty years of age, have been citizens of the United States at least nine years, and be residents of the States from which they are chosen. The term of office is six years, and as the senators are divided into three classes, so that one third retire every two years, the Senate is a continuous body. On account of its small size and its semi-permanent character, the Senate is able to discuss public business much more thoroughly than the unwieldy House of Representatives. It is, therefore, especially fitted for the work of confirming appointments and ratifying treaties made by the President, these being the chief special powers conferred upon the Senate by the Constitution.

**304. The Election of Senators.** — As the Senators are supposed to be the special representatives of the States in the national government, they are chosen by the respective state legislatures. Since 1866, the methods used by the legislatures in senatorial elections have been the same throughout the United States. On the second Tuesday after the meeting of a state legislature upon which the election devolves, the members of the separate houses are to name by *viva voce* vote their choice for the position, and a joint session is to be held the next day, a majority of each house

Composition and special powers.

*Constitution*, Art. I, § 3, cls. 1-3.

Bryce, *Am. Commonwealth*, abr. ed., 71-77.

Procedure in the legislatures.

Haynes, *Election of Senators*, 22-34.

*Constitution*, Art. I, § 4, cl. 1.

being present. If no one is elected on the first ballot, joint sessions are held daily at noon until a senator is selected. The choice, of course, always falls upon the candidate of the party which has a majority in the state legislature, this candidate having often been previously selected by a caucus. Sometimes, however, the majority fails to agree upon a candidate, and disagreement may even be carried so far that the State has no representative in the United States Senate, as was the case with Delaware in 1902.<sup>1</sup>

During the last decade there has been a widespread and constantly growing demand for a change in the method of electing senators. Successive Houses of Representatives have passed, by almost unanimous votes, resolutions which propose to amend the United States Constitution in order that senators may be chosen by *popular vote*, but the resolutions have never even been discussed in the Senate. The cause of the movement for popular election lies in the general belief that the legislatures are thwarting rather than expressing the wishes of the people, and is closely allied to the *distrust of our state legislatures* which has shorn them of many of their powers (§§ 89-91). As a means of avoiding the protracted contests in the legislatures, which are becoming much more common and seriously interfering with state business, and as a preventive of possible bribery, popular election would undoubtedly be a success.

Several of the States have already adopted laws which provide that, in the primary elections at which state officials may be nominated (§ 26), the *voters may express their preference for United States senators*. Ordinarily, this expression of opinion is not binding on the legislature. In Oregon, however, by a combination of direct nomination of senators

<sup>1</sup>When a vacancy occurs by death or resignation during the recess of the legislature, the governor may appoint some one until the next legislature shall choose a senator in the way just described. But when a legislature has failed to elect a senator and the government makes an appointment for the vacancy, the Senate refuses to admit the appointee as a member.

Proposed changes in the election of senators.

Mitchell, J. H., in *Forum*, 21 (1896), 385-397.

Haynes, *Election of Senators*, 100-129.

Popular nominations. Oregon method.



and pledges exacted from candidates for the legislature that they will support the senatorial nominee who has the largest vote, irrespective of party, a legislature of one party may choose a senator belonging to the opposite party — practically if not legally a popular election.

*Rev. of  
Revs.,  
35 (1907),  
748-751.*

**305. Senatorial Regulations.**<sup>1</sup> — Like the House of Representatives, the Senate does a large part of its work through committees. The selection of the committees is left with the party that controls the Senate at the beginning of each Congress, but usually certain rules are observed. The majority of the members upon all important committees belong to the party in power, who retain the chairmanships with possibly a very few unimportant exceptions. The chairman of any committee is not chosen arbitrarily, but is the committee member who has served longest upon the committee, unless he voluntarily relinquishes his position by preferring another more important chairmanship. In case a chairman dies or resigns, the position falls to the committeeman who has seen the greatest length of service, so that *in the Senate*, “seniority” is a fixed rule, and a fair evidence of senatorial conservatism.

Selection of  
committees.

McCona-  
chie, *Cong.  
Committees*,  
339-345.

The Senate spends a large part of its time in discussing public questions, but it has never been willing to adopt a rule that would limit the debate. This is done in most deliberative assemblies by asking for the “previous question,” which brings to a vote the question before the House. The Senate relies upon its natural dignity to keep the debate within bounds, but at times the lack of the “previous question” is painfully evident, for the minority have occasion-

Senatorial  
debate.

<sup>1</sup>The presiding officer of the Senate is the Vice President of the United States, who is not chosen by that body but is elected at the same time and in the same way as the President (§§ 313-317). Not being really a member of the Senate, he does not appoint the committees nor control business. He has a vote only when the Senate is equally divided. In case of his absence, death, or elevation to the presidency, his place is filled by a president *pro tempore* of the Senate, selected by the senators from their own membership.

ally protracted the discussion, and delayed much-needed action for purely selfish or partisan motives.<sup>1</sup>

Appoint-  
ments.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
44-46, 80-84.

**306. Special Powers of the Senate.**—A large part of the authority and influence of the Senate is derived from its power to confirm all important appointments made by the President. Because of the double system of choosing officials (§ 326) there has become fixed a custom called *senatorial courtesy* which leaves with the senators the actual selection of most persons holding national offices within their States.

Treaties.

As we have seen (§§ 228, 229), treaties are made by the President through the Department of State, but they do not take effect until approved by two thirds of the Senate. *The Senate is a real power in treaty making*, as it never hesitates to amend any articles or reject an entire treaty. When acting upon presidential appointments or discussing treaties, the Senate goes into *executive session*, the doors being closed and the proceedings remaining secret.

Reinsch,  
*Am. Legis-  
latures*,  
94-107.

Trial of  
impeach-  
ment cases.

*Constitu-  
tion*, Art. I,  
§ 2, cl. 5; § 3,  
cls. 6, 7;  
Art. II, § 4.

In addition to these executive duties, the Senate has one of a distinctly judicial nature. When any "civil officer" of the United States government is *impeached by the House of Representatives* for "treason, bribery, or other high crimes, or misdemeanors," the Senate sits as a court and hears the testimony for and against the official. No official can be convicted except by a vote of two thirds of all the senators present, and conviction carries with it only removal from office and disability to hold any other office under the United States, but the person may then be tried for crime like any other individual. Although the framers of the Constitution were sincere in their belief that impeachment could be relied upon as a valuable check upon public servants, the method has been used but seven times in all,

<sup>1</sup>This filibustering is especially likely to come at the close of the short session, which must end on March 4. In the closing days of the first session of the LX Congress, however, one of the opposition senators spoke eighteen hours.

with only two convictions.' By far the most interesting trial upon impeachment by the House was that of Andrew Johnson, President of the United States, in 1868.

The Senate is called upon to elect a *Vice President* whenever the electors fail to do so. The choice is limited to the two persons receiving the greatest number of electoral votes. At least two thirds of the senators must be present, and the person elected must have a majority of all the senators, whether present or not. Only once in our history (1837) has it been necessary for the Senate to ballot for Vice President.

Election of Vice President.

*Constitution, Amendment XII.*

Except in relation to just one subject, the Senate has the same powers of legislation as the House. "All bills for raising revenues shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills."

Financial powers.

*Constitution, Art. I, §7, cl. 1.*

## THE HOUSE OF REPRESENTATIVES

**307. General Character of the House.**—The larger branch of Congress, called the House of Representatives, is a body of almost 400 members elected every two years from districts of nearly equal population. The representation from any State depends upon its population, but every State has at least one representative. In the making of the ordinary laws, the House has equal power with the Senate. Because it is the more popular body, it has the right to originate all money bills (§ 249), to elect a President in case the electoral college fails of a choice (§ 321), and to bring articles

Composition and special powers.

<sup>1</sup>The two persons convicted were both district judges of the United States. Pickering, judge for New Hampshire (1804), charged with drunkenness and profanity, and Humphreys, judge for Tennessee (1862), for disloyalty. Five others have been tried on impeachment—Chase, justice of the Supreme Court (1805); Peck, district judge for Missouri (1830); Johnson, President of the United States (1868); Belknap, Secretary of War (1876); and Swayne, district judge for Florida (1906)—all of whom were acquitted. In 1797 Senator Blount of Tennessee was impeached by the House, but the Senate decided by a vote of 15 to 11 that congressmen were not "civil officers of the United States."

of impeachment against any civil officer for treason or for high misdemeanors in office (§ 306).

Apportionment of representatives.

*Constitution*, Art. I, § 2, cl. 3 ; Amendment XIV, § 2.

Reinsch, *Am. Legislatures*, 5-11.

Redistricting of a State.

Hart, *Actual Gov't*, § 105.

The number of representatives to which any State may be entitled is determined by the population as shown in the decennial census.<sup>1</sup> Congress selects some number as a ratio, and divides that number into the population of each State, granting the States representatives not only for the number given in the quotient, but for all additional fractions of more than one half. In 1901, this ratio was fixed at 1 to 194,182, a ratio which possessed the merit of not decreasing the representation in any State, although adding 29 to the membership of the House, making 391 members for that body, after five were added for Oklahoma in 1907.

If a State's representation is changed by any reapportionment, the legislature at the next session divides the State into the proper number of districts, each of which must, according to the congressional law, contain as nearly the same population as possible, and be compact and contiguous. This is to prevent, so far as may be, the evils of gerrymandering, which unscrupulous majorities in state legislatures are willing to employ for their own benefit (§ 32).

Nominations and elections.

*Constitution*, Art. I, § 2, cl. 2.

**308. The Election of Representatives.**—Except in three States, the congressional elections occur on the Tuesday after the first Monday of November in the even-numbered years. The nominations of candidates are almost invariably made by conventions of delegates from the towns or precincts of which the district is composed. No one is nominated unless he is a resident of the State, at least twenty-five years of age, and has been a citizen of the United States at least seven years, for the national Constitution expressly states that these shall be the minimum qualifications of representatives.

<sup>1</sup> Until the abolition of slavery in 1865, five slaves were counted as equal to three white persons for purposes of apportionment, the representation from the South being therefore proportionally smaller before the Civil War than since that time. According to the XIV Amendment, any State which denies to any of its adult male citizens the right to vote shall have its representation in the House reduced in the proportion that the number of excluded citizens bears to the total of male citizens over twenty-one years of age. This provision has never been applied.

There is no national suffrage law. Those who may vote for members of the lower house of the state legislature may vote also for congressmen. This leaves the question of suffrage wholly with the States, subject to the restriction of the XV Amendment of the United States Constitution that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Who may vote for representatives.

*Constitution*, Art. I, § 2, cl. 1.

The candidate who, upon the face of the returns, receives a plurality of the votes cast, receives a certificate of election from the governor of the State, and is permitted to take his seat in the House when that body is organized. If an unsuccessful candidate disputes his election, the case is carried before a House Committee on Elections, without, however, interfering with the successful candidate's right to attend sessions and vote. A liberal sum is allowed by Congress to each of the contestants to prove his claims, and often several weeks elapse before all the evidence has been taken. The committee then reports to the House, and, quite frequently by a party vote, the House decides who is entitled to the seat.

Process of deciding contested elections.

**309. The Speaker.**—At the beginning of each Congress, the most important task of the House is to elect its Speaker. This officer, who presides over the deliberations of the House, is probably more powerful than any other person connected with our system of governments, with the sole exception of the President of the United States. He is the leader of the majority, and is selected by a caucus of the majority before Congress meets, his election in the House being therefore of a formal nature. His chief powers are four in number. (1) He appoints all of the committees and selects the chairmen. (2) He assigns to the different committees the bills which the House wishes to commit. This gives him an opportunity, if two chairmen desire to investigate and report upon the same bill, to select the committee most in sympathy with his own views. (3) He recognizes whom he pleases on the floor of the House, and in consequence may easily limit the debate of the opposition upon any bill

Selection and powers.

Hart, *Actual Gov't*, § 108.

Bryce, *Am. Commonwealth*, abr. ed., 104-107.

by refusing to give the floor to one of their number. The House has found it necessary to give the Speaker this somewhat arbitrary authority in order to protect itself from the debating "filibusterer," who can in this way be silenced almost as effectually as by the previous question (§ 295). (4) The Speaker is the chairman of the Committee on Rules, the most powerful of the House committees.

Powers.

McCona-  
chie, *Cong.*  
*Committees*,  
191-207.

**310. The Committee on Rules** practically arranges the program of business for the House. It decides what committee shall be allowed to report on a certain day and what length of time shall be given for discussing the report. By discriminating between the reports of committees and giving the time of the House to those that it deems important, it enables the House to make headway with the vast number of bills reported back to it, and saves it from frittering away its time on non-essential measures. In other words, it does for the reports of the committees what each committee does with the bills assigned to it—sifts out those that need attention, and secures action upon these.

Composi-  
tion.

The Committee on Rules consists of five of the ablest and most experienced representatives, but the real power of the committee rests with the Speaker and the two other members belonging to the dominant party, for these three are, to all intent and purposes, the committee.

## RELATIONS AND CHARACTERISTICS

Members.

Haynes,  
*Election of*  
*Senators*,  
71-99.

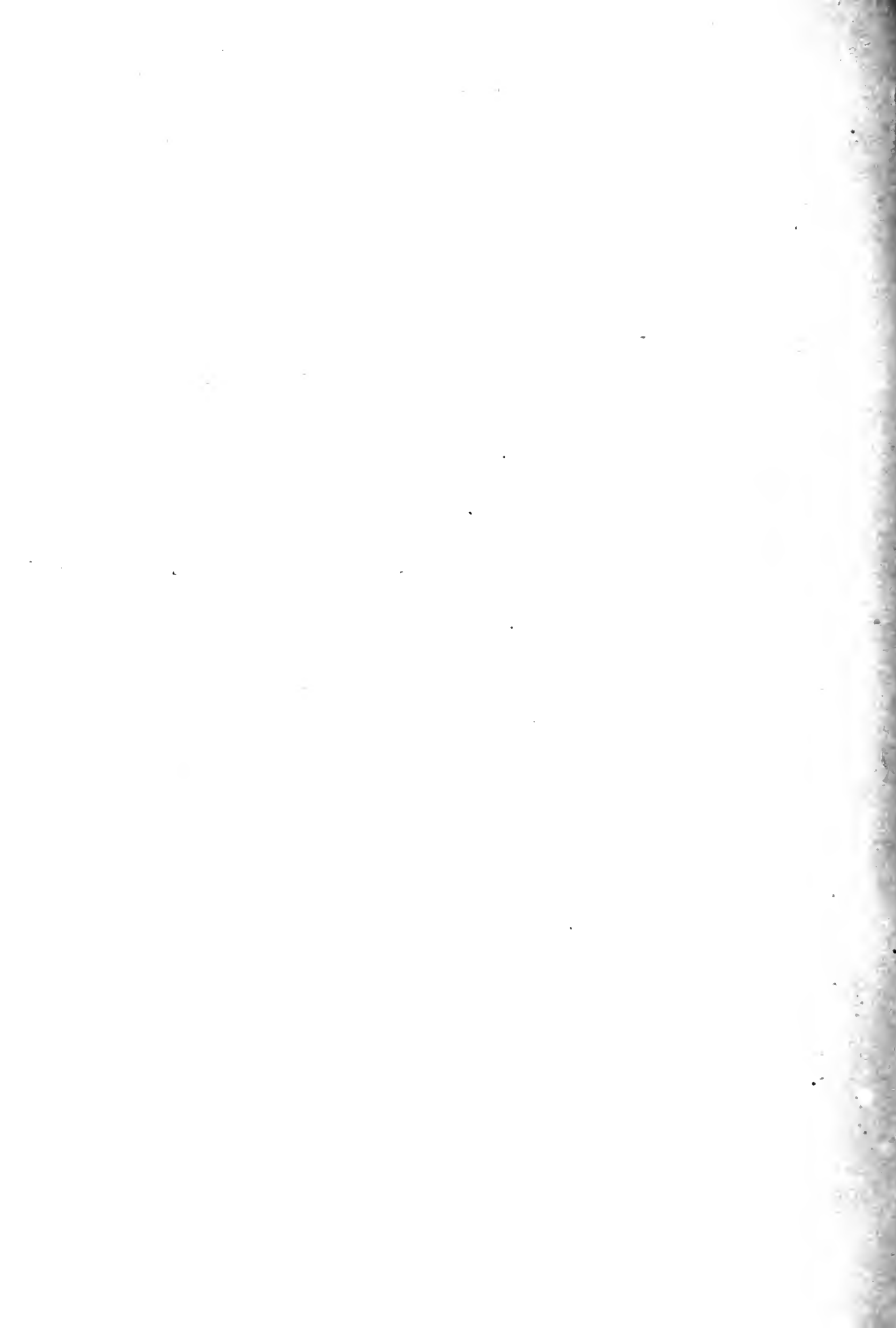
**311. The Senate.**—Perhaps the most striking characteristics of the Senate are its permanence and its conservatism. Because of the method of election, at least two thirds of the senators are always men who have seen service. Reëlection of members is much more common than for the lower house, partly because the senators are chosen by a small body of office holders and partly because a State loses greatly by changing senators. Since promotion on committees depends on continuity of service, the best chair-



SENATE CHAMBER



HALL OF REPRESENTATIVES





manships come to the members of the dominant party who have been longest in the Senate. Some of the Eastern States and some of those in the Middle West have kept the same senators for four or five terms. Promotion of members of the lower house, once very common, has been discontinued to a large extent. With the growing influence of corporations in our state legislatures, a larger percentage of capitalists and corporation lawyers have been chosen, so that by many the Senate has been considered the special guardian of vested interests.

The power of the Senate is augmented by its small size, its permanence, its lack of fierce partisanship and unity of interest, its special powers under the Constitution. As we shall notice in § 313, it more than holds its own in contests with the House, for even in bills for the raising of revenue, the wishes of the Senate have been dominant, as recent tariffs testify. Its unwillingness to delegate the least iota of its power in the making of treaties has hampered the conduct of foreign affairs, but to the gain of the Senate. The tremendous power it has wielded by virtue of its right to ratify appointments has contributed much toward making the Senate the most powerful organ in our system of government. What it has gained once it does not lose easily, for the senators are united — they are senators first and partisans later.

**312. The House.** — The House is more representative of the people than the Senate has ever been. The members are frequently politicians who have seen service in the state legislatures or local governments. Even if they are selected for several terms, which is unusual, their average tenure of office will be less than the six years for which every senator is chosen. A representative has comparatively little chance to make an impression during a single term of office, so greatly is power concentrated in the hands of the leaders. Indeed, many protest that, so far as legislation in the lower house is concerned, the "big three" of

Powers.

Lodge, H.C.,  
in *Scrib-  
ner's*,  
34 (1903),  
547-550.

McCall,  
S. W., in  
*Atlantic  
Mo.*, 92  
(1903),  
433-442.

Character-  
istics.

Reinsch,  
*Am. Legis-  
latures*,  
62-71.

the Committee on Rules manage everything. Because of its size, its delegation of work to committees, its lack of public debates, the House is less interesting than the Senate.

**The House  
at work.**

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
108-114.

The meetings of the lower house are held in a large hall in the south wing of the Capitol. The desks of the members are arranged in semicircular form about that of the Speaker, the Republicans on his left and the Democrats on his right. When a congressman gains the floor, he may speak from his seat or from the space before the Speaker's desk. In either case he is likely to receive scant attention, as the hall is almost always so noisy that difficulty is found in hearing any but the best speakers. Unless the subject is one of considerable importance, the members are quite often in adjoining rooms, or, if present, are devoting their time to something else. For these reasons, speaking and debate are much less prominent in the House than in the Senate, where the smaller room, and the more orderly deportment, give opportunities for speakers to present their views to advantage.

**Difficulties  
in keeping  
two legisla-  
tive houses  
coördinate.**

Cl. Ford,  
*Am. Politics*,  
266-274.

**313. The Senate and the House.**—There is no important European State in which the two houses of the legislature are of equal importance. For various reasons, the lower and more popular branch has usually much greater actual influence in shaping the policy of the government. It is beyond our purpose at this point to investigate those reasons; but, assuming the fact that the European houses are unequal, we may ask whether the Senate is dominated by the House of Representatives or the reverse, and the actual position of each house.

**Senate  
is not  
dominated  
by the  
House.**

It is certain that neither house is subordinate to the other. The chief cause of this is the separation of the executive and legislative departments. In this country the President and his advisers are not the agents of Congress, but of the people directly. If they were the agents of Congress, they could not serve both the Senate and the

House, but must choose one or the other. The one that was chosen, or that could make itself the real power in making and executing law, would, of course, control the other. This is what has happened in England and France, and what has not happened in the United States.

To-day the Senate is, in many ways, more powerful than the House. This is especially due to three things: first, the more permanent character of the Senate; second, its better organization; and third, the patronage it possesses through the right to confirm appointments. Those who have noticed the work in Congress for several years cannot fail to be impressed with the way in which the Senate has gained its end, although the House seemed to have every advantage. The senators have been more united. They have ignored or obstructed House measures time after time, while Senate bills have been forced through the House. In conference committees they have yielded less and obtained more than the representatives.

Advantages  
of Senate  
over the  
House.

**314. Congress and the Other Departments.**—There has never been very great danger that Congress would become subservient to either the President or the courts, for it has tended constantly to encroach on the spheres of those departments of the government. A vigorous executive, however, may seek to dictate the policy to be followed by Congress. In a contest between the two, Congress has the advantage of general legislative and financial powers, besides the veto of the Senate on treaties and presidential appointments. The President must depend on his veto and his claim that he may use his discretion in executing the laws that are passed. Ordinarily, when the President and Congress represent the same political party, their relations are cordial, and this is the case sometimes when they differ in their political views.

Congress  
and the  
President.

Ashley, *Am  
Fed. State*,  
§§ 397-403.

Bryce, *Am  
Common-  
wealth*,  
abr. ed.,  
155-166.

The control of Congress over the executive departments which aid the President is much greater than that exercised over the chief executive. These departments are cre-

Congress  
and the  
executive  
depart-  
ments.

Bryce, *Am. Commonwealth*,  
abr. ed.,  
156-159.

ated by statute, and may have their organization or powers changed at the wish of the lawmaking body. Their chief dependence upon Congress in practice arises from the power of Congress to give or withhold the money necessary to do their work. Even the President may be coerced into doing the will of Congress in some disputed point, by the failure of Congress to vote "supplies."<sup>1</sup>

Power over  
judiciary.

The Constitution does not provide for the organization of the judicial department, except to state that there shall be a Supreme Court and such inferior courts as Congress shall establish. The structure of the national judiciary is therefore arranged by congressional statutes. The number of the Supreme Court justices may be increased at any time, and the jurisdiction of most of the courts changed by act of Congress. It is well known that Congress does not interfere with the independence of the judiciary.

Ashley, *Am. Fed. State*,  
§§ 404-405.

### General References

- Ashley, *American Federal State*, pp. 231-267, 327-343.  
Reinsch, *American Legislatures and Legislative Methods*, pp. 3-125.  
Bryce, *The American Commonwealth*, abridged ed., pp. 71-166.  
Wilson, *Constitutional Government in the United States*, pp. 82-141.  
Wilson, *Congressional Government*, pp. 58-241.  
McConachie, *Congressional Committees*.  
Follett, *The Speaker of the House of Representatives*.  
Haynes, *The Election of Senators*.

### Topics

1. THE IMPEACHMENT OF PRESIDENT JOHNSON: Sherman, *Recollections of Forty Years*, I, pp. 413-432; Blaine, *Twenty Years of Congress*, II, pp. 341-384; Cox, *Three Decades of Federal Legislation*, pp. 578-594; Ross, E.G., in *Scribner's Magazine*, 11 (1892), 519-524;

<sup>1</sup>This power may, however, be easily overrated. Professor Dewey, in his *Financial History of the United States*, § 105, says, "It is estimated that one half of the current expenses of the government, exclusive of pensions and salaries, is beyond the reach of any particular Congress, except by positive legislative action of a repealing character, requiring the consent of the President, unless overruled by a two-thirds vote of Congress."

Burgess, *Reconstruction and the Constitution*, pp. 172-192; Dunning, *Civil War and Reconstruction*, pp. 253-303; Chadsey, *Struggle between President Johnson and Congress*, Chapter VI.

2. POPULAR ELECTION OF SENATORS: Garrison, W. F., in *Atlantic Monthly*, 68 (1891), 227-232; Edmunds, G. F., in *Forum*, 18 (1894), 270-278; Mitchell, J. H., in *Forum*, 21 (1896), 385-397; Haynes, J., in *Johns Hopkins University Studies*, 11, 547-560; Haynes, in *Election of Senators*, pp. 100-270.

3. REAL POWER OF THE SENATE: West, H. L., in *Forum*, 31 (1901), 423-431; Low, A. M., in *North American Review*, 174 (1902), 231-244; Moody, W. H., in *North American Review*, 174 (1902), 386-394; Nelson, H. L., in *Century Magazine*, 65 (1903), 499-515.

4. THE SPEAKER OF THE HOUSE: Nelson, H. L., in *Atlantic Monthly*, 64 (1889), 64-73; Cockrell, E., in *Arena*, 22 (1899), 653-666; Reinsch, *American Legislatures*, pp. 41-71; Hart, *Essays on American Government*, I; Follett, *Speaker of the House*, especially Chapters III and XI.

### Studies

1. The Senate—its working and influence. Bryce, *The American Commonwealth*, abridged ed., 83-93.

2. Arguments for popular election of senators. Haynes, *Election of Senators*, pp. 180-239.

3. Treaty-making powers of the Senate. Lodge, H. C., in *Scribner's Magazine*, 31 (1902), 33-43.

4. Impeachment—historical and descriptive. Harrison, *This Country of Ours*, pp. 148-158.

5. Financial methods of the houses of Congress. Wilson, *Congressional Government*, pp. 136-192.

6. Criticisms of the Committee system. Bryce, *American Commonwealth*, abridged ed., pp. 119-129; Wilson, *Congressional Government*, pp. 70-72, 79-85, 91 *et seq.*

### Questions

1. How many senators were there, April 30, 1789? (Give the number of States in the Union on that date.) What is the number now? Are there any vacancies now? To what are they due? How are the political parties represented in the present Senate? (*Congressional Directory*.)

2. Give the names of our senators. When do their terms close? How long have they been in the Senate? What official positions had each held before his election to the Senate? To what party does each

belong? Does either come from this part of the State? (*Congressional Directory.*)

3. What is the number of standing committees in the Senate now? Are there many special or joint committees? Name the chairman of the most important committees. Of what committees are our senators chairmen? (*Congressional Directory.*)

4. What officials are appointed by the President in this county? What treaties were ratified by the Senate during the last Congress? Have any treaties been rejected by the Senate recently?

5. What is the smallest number of senators who at the present time can pass an ordinary bill? ratify a treaty? elect a Vice President?

6. How can the Constitution be amended without consulting the Senate? (Constitution, Art. V.) What officials can be removed from office only through impeachment? (Art. II, § 4.) How can a congressman be removed? (Art. I, § 5.)

7. How many congressional districts are there in this State? In which one do we live? Which counties (if more than one) are comprised in it? How does it compare in area and population with others of the State? (Newspaper Almanacs.)

8. Who is our representative at present? How many terms has he been in Congress? On what committees does he serve? How many members has each political party in the present house? (*Congressional Directory.*)

9. Name in order the six committees you consider most important, and give the chairman of each. Who is the Speaker of the House?

## CHAPTER XXV

### THE PRESIDENT

**315. The President's Position.**—The most conspicuous personage connected with our system of governments is unquestionably the President of the United States. This is due not only to the method of election, which serves to center popular interest in the presidency every four years, but to the prominence of the duties assigned to our chief executive, and the great concentration of power in his hands. In the control of military affairs and in affairs of peace, as well as in international relations, his is the central figure, representing most nearly the dignity and sovereignty of the Nation.

Reasons  
for his  
prominence.

*The great power of the President* comes from two sources. First, the Constitution assigns to the President duties of magnitude in authorizing him to execute the laws, in addition to directly conferring powers connected with legislation, military affairs, and foreign relations that would of necessity make him a powerful official. Second, all officials belonging to the executive branch of the national government are directly or indirectly responsible to the President. They are appointed by him or by some of his immediate subordinates, and may be removed if they fail to carry out his policy. The importance and the value of this *concentration of executive and administrative authority* in the hands of the President, can be appreciated better if we compare him with the state governor. The latter, as we saw (§ 92), has many powers granted him by the constitution of his State, but, because of his inability to control more than a small

Constitutional  
powers.

Administrative  
centralization.

Goodnow,  
*Comparative Administrative Law*, I,  
62-70.

proportion of the officials who carry out state laws, has never been able to make the state executive department coordinate with the legislature.

### THE SELECTION OF A PRESIDENT

Three steps  
in election.

**316. The Selection of Delegates to a National Convention.**—The election of a President involves three steps: the nomination, the choice of presidential electors, which occurs in November of the years divisible by four, and the meeting of the electors to vote for President and Vice President the following winter.

Delegates.

Lcw, A. M.,  
in *Scrib-  
ner's*, 27  
(1900),  
643-646.

Nominations are always made by conventions composed of party delegates from the different States or congressional districts (§ 24). The time and place for holding a convention are decided by the national committee of each party, which instructs the different congressional districts to elect two delegates and two alternates who shall represent the districts in the convention. The States are at the same time requested to appoint four delegates at large, as representatives of the State, so that usually there are twice as many delegates as there are members of Congress.

Instruction  
of delegates.

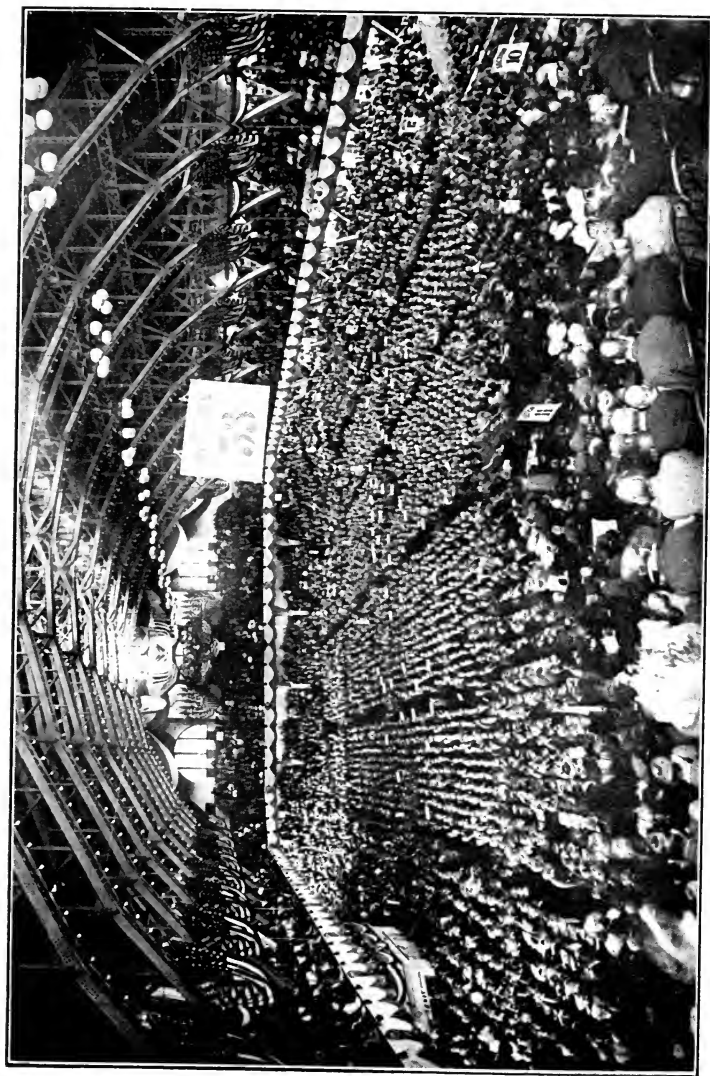
Dallinger,  
*Nomination  
for Elective  
Office*, 75-78.

An effort is made, ordinarily, by the men who wish to be nominated for the presidency, to secure the election of delegates favorable to themselves, and to have the delegates *instructed* to vote for them in the national convention. For this reason, it may be known before the convention meets who will be the presidential nominee of the party. Often there are numerous and interesting contests between two delegations from different districts or States. Until the national convention secures the evidence regarding the facts in dispute and the convention decides which delegation shall be seated, there is much doubt.

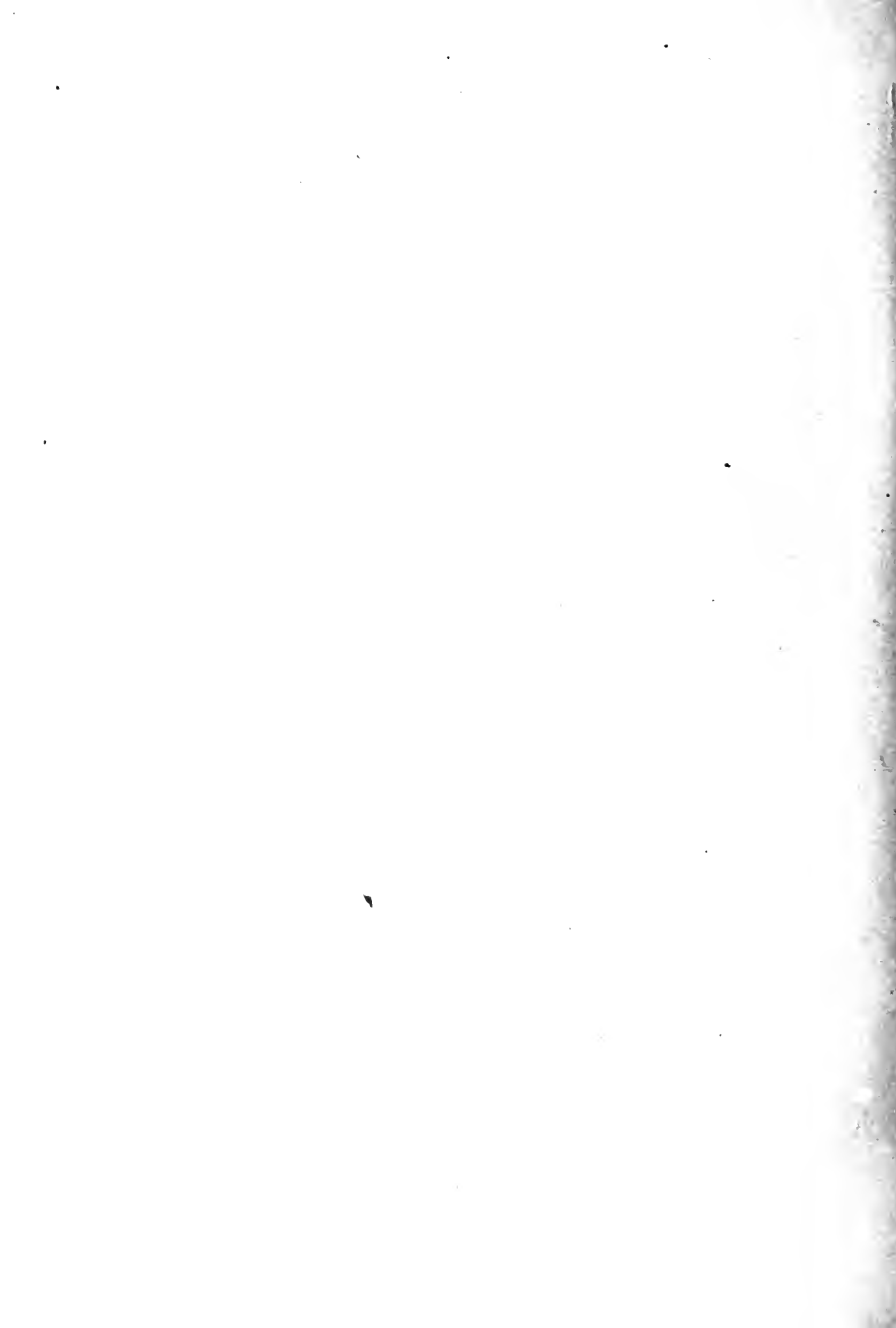
Committee  
reports.

**317. A National Convention at Work.**—Upon the day appointed by the national committee, the convention is called to order by the chairman of that committee. A tem-





REPUBLICAN CONVENTION, CHICAGO, 1908, NOMINATING WILLIAM H. TAFT



porary chairman is chosen and several *committees* are appointed, each consisting of one member from each State selected by that State's delegation. One of these learns what delegates have been elected to the convention and another drafts a platform. After the committee on *credentials* has made its report, the convention must decide which of two contesting delegations was duly elected. It then proceeds to hear the report of the Committee of Resolutions. Radical changes in the *platform* proposed by the committee are unusual, but at times, as in the consideration of the free silver plank in the Democratic convention in 1896, the debate has been keen and the speakers eloquent.

The  
platform.

Low, A. M.,  
in *Scrib-  
ner's*, 27  
(1900),  
646-649.

When the convention has adopted a platform setting forth the principles of the party, the roll of the States is called, and *nominations* are then in order. Even when there is no doubt about which presidential candidate will be chosen, favorite sons of the different States are often nominated, and receive complimentary votes on the first ballot. Ordinarily, from five to ten contestants enter the field for the prize, each of whom is nominated in laudatory speeches followed by prolonged applause. The nominations having been closed, the roll of the States is called again, and the chairman of each delegation announces its vote. If any man receives a majority vote—or a two-thirds vote in the Democratic convention—one of the managers for a defeated candidate immediately moves the nomination be made unanimous. This is almost invariably done. Usually several ballots are taken, and at times the voting is very much prolonged, as in the Whig convention of 1852, in which fifty-three ballots were necessary, or in the Republican convention of 1880, which nominated James A. Garfield on the thirty-sixth ballot. Occasionally, on the other hand, candidates are nominated by acclamation without going through the customary forms.

Nomina-  
tions.  
Balloting.

Bryce, *Am.  
Common-  
wealth*,  
II, Ch. LXX.

After selecting the candidate for President, the convention proceeds to choose a nominee for Vice President. As the

Selecting a  
vice-presi-  
dential  
candidate.

position is one of more honor than power, it is not often desired by men of the greatest ability. It is given usually to a leader of some minor faction of the party, or to a politician whose State is located some distance from that of the presidential nominee. In either case it would give strength to the "ticket." Unsuccessful candidates for the presidential nomination are rarely or never chosen.

Constitu-  
tional or  
practical  
qualifica-  
tions.

*Constitu-  
tion*, Art. II,  
§ 1, cl. 4.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
58-63.

Wilson,  
*Cong. Gov't*,  
246-254.

**318. The Qualifications of Candidates.** — There are two classes of qualifications required of every candidate nominated for the presidency: the first constitutional, the second practical. (1) The *Constitution* does not allow any person to hold the office of President or Vice President, unless he is a native-born American at least thirty-five years of age, and has been a resident within the United States fourteen years. The two officials are expected also to be citizens of different States. (2) The convention, while not ignoring these qualifications, pays much more attention to the *availability* of a candidate, selecting the man who will be most likely to win. On this account, statesmen whose long public service may have been of great value, but who have made enemies, are obliged to give place to newer men whose careers are less well known, and, therefore, less subject to attack. Candidates have, in fact, been selected chiefly because they stood the best chance of carrying some doubtful State, so that frequently considerations which should be of minor importance play a great part in the nomination. Whenever a convention fails to select a candidate at first, the coveted honor frequently goes to some one who had scarcely been mentioned for the place — to a "dark horse," as such an eleventh-hour candidate is called.

The  
campaign.

Bryce, *Am.  
Common-  
wealth*, II,  
Ch. LXXI.

**319. Campaign and Election.** — After the candidates for the presidency have been notified of their nomination, and have sent in their letters of acceptance defining their position upon public questions, the campaign may be said to have begun. Its close is marked only by the November election, interest and excitement constantly growing until the result is known. During these three or four months, business becomes less active, and each party organizes its forces as carefully as possible. The great burden of the campaign is borne by the permanent committees of the political par-

ties, which form campaign clubs, collect funds, hold mass meetings, and distribute an immense amount of partisan literature, supplementing this with active personal work among the doubtful voters (§ 38).

On the Tuesday after the first Monday of November in each leap year, the voters go to the polls and cast their ballots, not for the candidates for President and Vice President, but for *electors* who will later vote for these persons. Each State is entitled to as many electors in the "*college*" which elects the President as it has senators and representatives in Congress. Each party has accordingly selected the requisite number of electors, and has placed their names upon the official ballot (§ 29).

Choosing the presidential electors.

Hart, *Essays on Gov't*, 61-66.

As a matter of course, all voters will vote "straight" tickets, that is, for the electors of one party only, but, as accidents will happen, the total vote for the different electors of any party is never exactly the same. In consequence, if the vote of a State is about equally divided between two parties, some electors of one may be chosen with those of the other. For example, if there are twelve electors from the State in the "college," the twelve electors who receive the greatest number of votes are chosen, whether all of them belong to one party or not.

Divided electoral votes.

As there is no national suffrage law, persons can vote in some States who would not be allowed to do so in others. In fact, there is nothing in the United States Constitution to prevent a State's leaving the appointment of its electors to the legislature, as all of them did formerly. Or two electors at large may be chosen from the whole State, while the others are elected in the different congressional districts. It is well to bear in mind, however, that at present *custom and public opinion make popular election of electors compulsory*, and that the United States Constitution by the Fifteenth Amendment does not permit a State to abridge the right of citizens of the United States to vote on account of race, color, or previous condition of servitude.

How electors may be chosen.

**320. The Work of the Electoral College.** — The *actual election of the President* and Vice President occurs on the second Monday in the January following a "presidential election." On that day the electors who were chosen in November meet at their respective state capitals, and vote for the candidates of the party which they represent. A certified copy of these electoral votes is forwarded by mail, and

Casting and counting the ballots.

*Constitution*, Art. II,  
§ 1, cl. 2,  
Amend. XII.

another by messenger, to the president of the Senate, who opens these ballots before the assembled senators and representatives on the second Wednesday of February. The announcement on this occasion definitely concludes the election of the President, unless no one has received a majority of all the electoral votes.

The  
disputed  
election  
of 1876.

The result in one very interesting and exciting election, that of 1876-1877, hinged upon the counting of several disputed electoral votes. The Republican candidates, Hayes and Wheeler, had 185 votes, 21 of which were contested, while the Democratic nominees, Tilden and Hendricks, received 184 that were not in doubt. The 21 Democratic electors who claimed to have been chosen, insisted upon voting for their party's candidates, and the delicate question of which had actually been elected was at last referred to an *Electoral Commission* of five senators, five representatives, and five Justices of the Supreme Court. The decision of this commission, giving Hayes and Wheeler all 21 of the votes in dispute, was accepted as final by both candidates and by the parties they represented.

Burgess,  
*Reconstruction and Const.*,  
280-295.

The  
Electoral  
Count Bill.

In 1887, Congress passed the Electoral Count Bill, which provides that when two sets of electoral votes are cast in any State, the set shall be counted which bears the signature of the state executive or which has been declared legal by the state courts. If the State fails to decide the question, the votes must be discarded unless *both* houses of Congress can agree upon the set to be accepted.

Extra election  
of  
President  
and Vice  
President.

**321. Election by the House of Representatives.** — When the electoral college fails to choose the President, the House of Representatives proceeds to elect one from the *three* candidates who stood highest on the list of the electors. The vote is then taken by *States*, each State having one vote, but members must be present from two thirds of the States, and a majority of all the States is necessary to a choice. The failure of the college to elect a Vice President leaves the selection of that official with the *Senate*. From the two candidates who have the greatest number of electoral votes, one is chosen by a majority of all the senators, at least two thirds being present.

*Constitution*,  
Amend. XII.

Election  
of 1800.

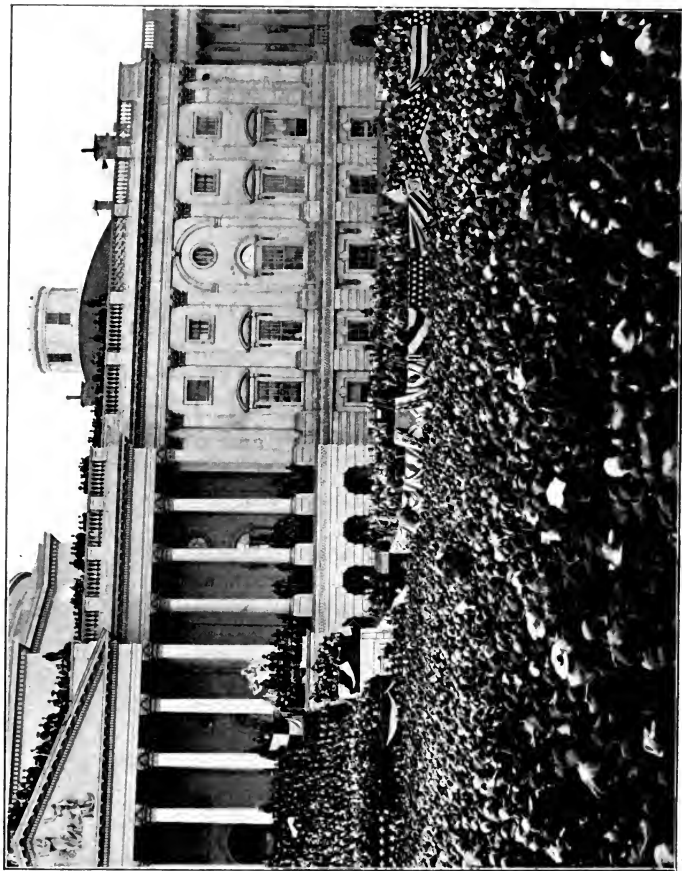
In the election of 1800 the electors did not designate whether the candidates voted for were nominees for the presidency or vice presidency; they merely cast two ballots. As Jefferson and Burr each had seventy-three votes, the House was obliged to select one of the two. Jefferson was chosen only after thirty-six ballots. The Twelfth Amendment was adopted in 1804, which changed the method in certain particulars, and made it necessary for the electors to designate the office of each candidate.

Schouler,  
*United States*, I,  
492-500.

Election  
of 1824.

In the election of 1824, there were four men who received votes in the





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INAUGURATION OF PRESIDENT MCKINLEY (1897)



college. Jackson had ninety-nine, Adams eighty-four, Crawford forty-one, and Clay thirty-seven. The choice was limited to the first three, and as Clay held views similar to those of Adams, by counting the votes of their followers, Adams was elected by the House without difficulty. It will easily be perceived that the failure of the college to elect cannot recur under the present Constitution, unless there are more than two great parties, or during the reorganization of parties.

The Constitutional Convention, after considering many ways of selecting the President, finally decided to leave the choice with electors chosen by the States in the way prescribed by each. These electors, as stated above, were equal in number to the representatives and senators from the States, and were, at the first, usually themselves elected by the state legislatures. It was the intention to name the best men possible, and permit them to use *their own judgment* in the selection of the executive. Even before 1801, the electors had become a mere cog in the political machine, registering the popular will.

**322. The Inauguration** of a President occurs on the 4th of March following his election. It is one of the most prominent social events connected with the life of the Nation. The ceremony is quite impressive, and always attracts large numbers of strangers. Before an immense throng the oath of office is administered by the Chief Justice of the Supreme Court. It is in this form: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States." This is immediately followed by the *inaugural address*, a popular speech, which with notable exceptions has exercised little influence on the course of events.

**323. Term and Compensation of the President.**—It was only after a great deal of discussion and many changes that the convention of 1787 finally selected four years as the term of office. As nothing was said about reëligibility, it remained for custom to place a fixed limit upon the number of terms possible for any one man. It would have been easy for either Washington or Jefferson to have been chosen

Burgess,  
*Middle  
Period*,  
136-144.

First  
method of  
electing the  
President.

Oath of  
office.

Harrison,  
*This Coun-  
try of Ours*,  
91-97.

Davis, R. H.,  
in *Harper's  
Mag.*, 95  
(1897),  
337-355.

"Third-  
term  
tradition."

No. Am.  
*Rev.*, 186  
(1907),  
620-624.

McMaster,  
*With the  
Fathers*,  
53-70.

a third time, but each preferred the seclusion of private life. Later Presidents did not wish to alter the rule; and since the futile attempt made by Grant's adherents to nominate him a third time (1880), it has become a practical impossibility for any one to break the "third-term tradition."

A six-year  
term.

There has recently been quite a little discussion about altering the term of office, going back to the six or seven years preferred by the convention at first, and not allowing the President to be reelected. The reasons for this suggestion are found in the objections to the exciting campaign every four years, and to the bad effect which a desire to remain in office has upon a President's policy during the last two years of the first term. There can be no doubt that these objections are well grounded. Yet there is much to be said on the other side. Four years have been all too long for some of the Presidents we have had. Six years would mean no reeligibility, so that a satisfactory President could not be retained. Or if he might be elected again, he would have a stronger hold upon the patronage, which always plays a part in elections, and would pander still more to popular prejudices, as reelection would be more difficult if the term were six years.

Cornell,  
A. B., in  
*Forum*,  
22 (1897),  
563-570.

Salary of  
the Presi-  
dent.

The salary of the President was at first \$25,000 a year. In 1873 it was raised to \$50,000, and in 1909 to \$75,000. In addition, the executive mansion known as the White House is placed at the disposal of the President, and the government pays most of the expenses incurred in the performance of diplomatic and social duties, aggregating about \$150,000 a year.

*Constitu-  
tion*, Art. II,  
§ 1, cl. 6.

Position of  
the Vice  
President.

**324. Succession to the Presidency.**—In all the proceedings connected with the selection and installation of the President, the *Vice President* plays a very minor rôle. Chosen for the votes he may control rather than the merits he possesses, he is destined to be quite as inconspicuous during his four years of office as he was during the months preced-

*Harper's  
Weekly*,  
52 (1908), 6-7.



WHITE HOUSE FROM WEST

(From War, Army, and Navy Building, showing modern wing with President's office)



EXECUTIVE ROOMS

(President's office in foreground)



ing the inauguration. He presides over the deliberations of the Senate, but he is not a member of that august assembly. He cannot appoint its committees, neither can he influence its actions except through the force of his personality. Were it not necessary to have some popular representative who may take the place of the President if the presidency should become vacant for any reason, the Vice President would be a very superfluous national official. But, as five Vice Presidents have been called upon to assume presidential duties, the value of the office is apparent.<sup>1</sup>

In case both President and Vice President die during the term for which they were elected, the office of President will be filled by the *members of the Cabinet*, in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-general, Postmaster-general, Secretary of the Navy, Secretary of the Interior. Previous to 1886, when the present law was passed, the president *pro tempore* of the Senate and the Speaker of the House would have succeeded to the presidency had that office become vacant. The chief objection to the older law was the possibility of having as President a man whose policy was the exact opposite of the former chief executive.

Presidential  
Succession  
Act.

*Constitution*, Art. II,  
§ 1, cl. 5.

Stanwood,  
*History of  
Presidency*,  
450-452.

## POWERS AND DUTIES OF THE PRESIDENT

**325. Executive and Military Powers.**—The execution of law is ordinarily a peaceful process in which the executive officers deal directly with individuals. Occasionally, persons may break a national law, or openly resist the execution of a particular act. It is then necessary for the executive officials to arrest the offenders, and secure their conviction by the courts and subsequent punishment. If

By peaceful  
and military  
means.

Harrison,  
*This Coun-  
try of Ours*,  
113-118.

<sup>1</sup>John Tyler became President in 1841 at the death of W. H. Harrison. Millard Fillmore, in 1850, took Zachary Taylor's place; and Andrew Johnson, Chester A. Arthur, and Theodore Roosevelt were elevated to the presidency when Abraham Lincoln, James A. Garfield, and William McKinley were assassinated in 1865, 1881, and 1901, respectively.

*Constitution*, Art. II,  
§ 2, cl. 1.

the resistance is active and widespread, the President may find it necessary to use the regular army or the militia to suppress riots. This can be done very effectually, *because the President is both the chief executive and the commander-in-chief of the army*. On several occasions the regular troops have been called out to protect the mails and interstate commerce.<sup>1</sup> Especially during the great railway strikes of 1877 and 1894, the arrival of the United States troops at the scene of disorder had a very wholesome effect upon the rioters, with whom in some instances the local authorities were unable to cope successfully.

Great power  
in time of  
war.

Schouler,  
J. B., in  
*Forum*, 23  
(1897), 70-74.

The real military power of the President can be exercised only in case of actual war. Theoretically, an army can be raised and war actually declared by Congress alone (§ 237), but as military commander-in-chief *the President may really begin war*, and Congress will then have no alternative but to vote men and money for carrying it on, or risk loss of national prestige by an unseemly withdrawal from hostilities. In the prosecution of a war a President may become a *military dictator*, continuing to increase his power until within vast territories there is no government except that under martial law. During the Civil War, for example, the President, by virtue of his position as military commander, suspended the privilege of the writ of habeas corpus in a large part of the North, and issued the Emancipation Proclamation, freeing the slaves in the States then in insurrection. During that struggle, according to Mr. James Bryce, "Abraham Lincoln wielded more authority than any single Englishman has done since Oliver Cromwell."

Presidential  
offices.

**326. The Power of Appointment.**—The President has the right to appoint "with the advice and consent of the Senate" all ministers to foreign countries, consuls, national judges, and all other United States officials and employees whose

<sup>1</sup>The President may direct the movement of the army in order to protect any State from invasion, or from domestic violence, on application of a state legislature or executive.

appointment is not left to heads of departments or the Civil Service Commission. As a matter of fact, the President names persons for only the most important positions, including those abroad, the chief places in Washington, collectorships throughout the United States, and first-, second-, and third-class postmasterships—in all something over eight thousand offices. This power of appointment is one of the most valuable given the President, although it undoubtedly causes him very great annoyance. The throngs of office seekers have made the life of many a President a burden, and an unwise or unpopular appointment often alienates large numbers of a President's supporters.

The practical working of the system leaves the President most of the discomforts, with only a fair share of the benefits, that accompany the right to select subordinates. This is caused by the necessity of consulting the Senate in making appointments. The senators who belong to the same party as the President insist that their wishes be respected when any appointments are made to offices situated within their States. If the President does not nominate the man selected by a senator or choose one from two or three whom the senator names, his appointment is likely to be rejected in executive session. The Senate upholds the right of a senator to make these selections, and each senator is accustomed to vote for any appointment made by another senator, a practice called *senatorial courtesy*. Appointments of this character are in reality made not so much with the consent of the Senate as upon its advice. *The President is really free to consult his own wishes in making but a small proportion of his appointments*, the chief of which are to Cabinet positions and foreign offices. The general system of appointment, it can readily be seen, leaves to the Senate the lion's share of national patronage.

*Constitution*, Art. II, § 2, cl. 2.

Hart, *Actual Gov't*, § 125.

Practical working of the system.

Bryce, *Am. Commonwealth*, abr. ed., 44-48.

Harrison, *This Country of Ours*, 107-112.

*Minor appointments* were formerly left entirely to the heads of bureaus or departments, who were in turn appointees of the President. Since 1883 a constantly increasing percentage of these employees have

Civil service appointments.

Larned  
(ed.), *Hist.  
for Ready  
Ref.*, VI,  
145-148.

been chosen by the national civil service commission. The number of places filled in this way has been increased so rapidly that in 1907 about 200,000 of the 350,000 civil positions under the national government were filled by the Commission. Of the remainder, 40 per cent are fourth-class postmasters chosen by the fourth Postmaster-general.

Historical  
changes.

Cleveland,  
G., in *Atlant-  
ic Mo.*,  
85 (1900),  
726-732.

**327. The Power of Removal.**—The Constitution does not state how removals shall be made, but by custom it is now left exclusively with the President, although for twenty years officials could be removed only with the consent of the Senate. Having so much influence in appointments, the Senate would naturally wish to be consulted in removals as well. The First Congress, however, passed a resolution which declared that the President was not obliged to obtain the consent of the Senate. This practice remained unchanged until, in 1867, Congress passed the famous Tenure of Office Act, requiring the indorsement of the Senate for both removals and appointments. In 1887 this law was repealed and the power again left to the President alone. When an official resigns or is removed during a recess of the Senate, his successor may hold office without confirmation until the close of the next session of Congress.

General.

**328. Legislative Powers.**—The President may exert a very powerful influence upon the actions of Congress through his right to *veto bills*, to *call special sessions*, and to *adjourn Congress* when the houses fail to agree upon a date. Sometimes he also succeeds in persuading the national legislature to carry out his policy by sending *regular and special messages*.

Veto power.

Bryce, *Am.  
Common-  
wealth*,  
abr. ed.,  
41-44,  
163-166.

The President's right to veto bills (§ 301) gives him more influence over Congress than any of his other legislative powers. Most Presidents have, however, used the veto sparingly, and some not at all. The proportion of bills passed over vetoes has been remarkably small, for the congressmen have rarely failed to be impressed by the reasons given for executive disapproval, and a two-thirds majority can be obtained only under exceptional circumstances.

Messages.

The President's *annual message* is always sent to Congress



the first week of each session. It is usually little more than a summary of the work of each of the executive departments, with some suggestions on that work. Occasionally, a large part of the message is taken up with the formulation and statement of some policy; but this is not common, as the message nowadays exerts but little influence on the course of legislation. *Special messages* are often sent. If these relate to some subject of great popular interest, their influence upon legislation is marked and immediate; but with special messages, it is the pressure of public opinion, rather than the power of the President, that leads to favorable action.

*Constitution, Art. II, § 3.*

**329. Other Powers.**—Persons who have broken national laws and been convicted, may have their sentences temporarily suspended, *i.e.*, they may be *reprieved* by the President. He may grant *pardons* as well, except in cases of impeachment. The power has been used most extensively in granting *amnesties* to persons who have taken part in insurrections against the United States. Otherwise, it does not possess the significance that attaches to the pardon of the state governors (§ 94), because offenses against national law are very much less numerous than those committed under state laws.

Judicial powers.

Harrison, *This Country of Ours*, 142-148.

*The President has almost absolute control of foreign affairs.* The Secretary of State (§ 335), to whom the actual negotiation of treaties and the conduct of other foreign relations is intrusted (§ 228), is the personal representative of the President, removable by him at any time. Although the President always deals with foreign nations through the secretary, the President has an unquestioned right to *recognize a new government*, and to decide when a *minister shall be received or dismissed*. The policy called the *Monroe Doctrine* is distinctively a presidential policy (§ 230). His independence is more conspicuous in foreign relations than in military affairs, and his power in connection with these two subjects is comparable only with that of appointment and the veto.

Foreign affairs.

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2. DISPUTED ELECTION OF 1876: Stanwood, *History of the Presidency*, pp. 356-393; Cox, *Three Decades of Federal Legislation*, pp. 651-668; Rhodes, *United States since 1850*, VII, pp. 206-281; Haworth, *Disputed Presidential Election of 1876*.
3. THE MONROE DOCTRINE: Foster, *Century of American Diplomacy*, pp. 438-478; Latané, *United States and Spanish America*, pp. 266-289; McMaster, *With the Fathers*, pp. 1-54; *The American Nation*, XXIV, pp. 304-313, XXV, pp. 255-284.

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2. Famous speeches at national conventions. Orr, L., in *Munsey's Magazine*, 29 (1908), 1-14.
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4. Management of presidential campaigns. *Review of Reviews*, 22 (1900), 549-562; 30 (1904), 289-298; Rogers, J. M., in *Booklovers Magazine*, 14 (1904), 437-451.
5. Campaign spellbinders. Crissey, F., in *Reader*, 4 (1904), 635-642; Guild, C., Jr., in *Scribner's Magazine*, 32 (1902), 561-575.
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7. The hampered executive. Nelson, H. L., in *Century Magazine*, 66 (1903), 140-151.
8. The overworked President. Steffens, L., in *McClure's Magazine*, 18 (1902), 483-492.
9. The life of a President. Harrison, *This Country of Ours*, pp. 159-180.
10. Our fellow-citizen of the White House. Buel, C. C., in *Century Magazine*, 53 (1897), 645-664.
11. Restoration of the White House. Moore, C., in *Century Magazine*, 65 (1903), 807-831.
12. Independence of the executive. Cleveland, G., in *Atlantic Monthly*, 85 (1900), 721-732; 86, 1-14. Also in *Presidential Problems*.
13. The President and the Pullman strike (1894). Cleveland, G., in *McClure's Magazine*, 23 (1904), 227-240. Also in *Presidential Problems*, 79-117.

### Questions

1. During the last presidential campaign, what candidates were before the conventions? How many ballots were taken at each convention? Was there any dispute over any plank of the platform? If so, what one? (Newspaper Almanacs for following year.)
2. How many members of the "electoral college" are there? How many are necessary to a choice? How many electors has this State? How have they voted in recent elections? (Appendix B.)
3. Have we had any Presidents since the Civil War who received a minority of the popular vote? What Presidents have been chosen from west of the Mississippi? What States have had the greatest number? (Newspaper Almanacs.)
4. What persons connected with the postal service are selected by the President and Senate? by the fourth postmaster-general? by the Civil Service Commission?
5. What important treaties have been negotiated the past year or two? Were they ratified at once by the Senate?
6. What President has vetoed the most bills? Which one has had the largest number of important ones passed over his veto? Name any recent use of the veto.
7. Look up the last presidential message. To what topics is most space given? What policies are suggested? Have any of these suggestions been incorporated in law?

## CHAPTER XXVI

### THE EXECUTIVE DEPARTMENTS

#### THE PRESIDENT'S CABINET

Composition and duties.

Bryce, *Am. Commonwealth*, abr. ed., 64-70.

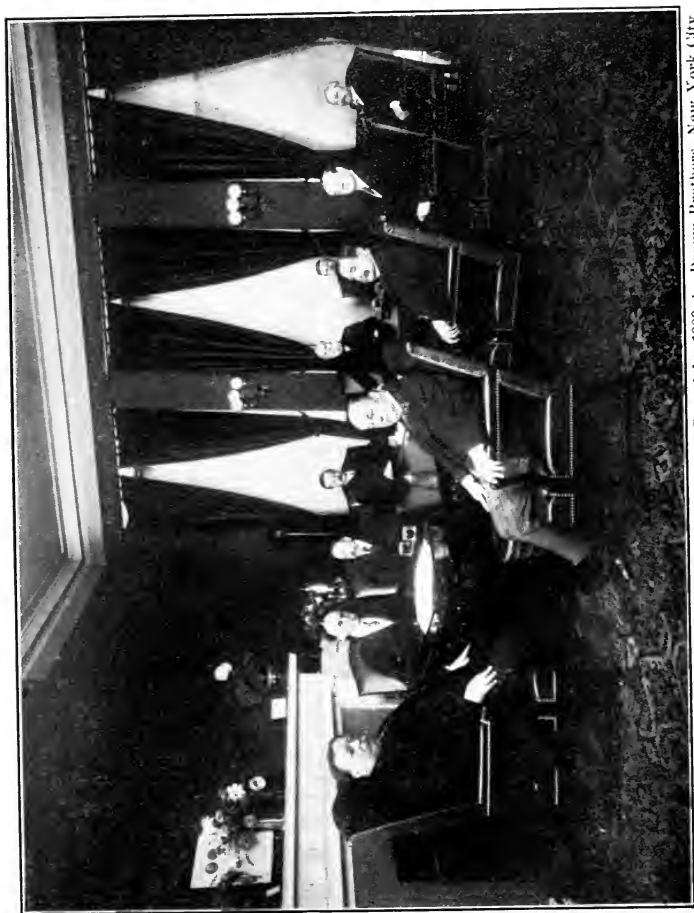
Fairlie, *Nat. Administration*, 54-63.

**330. Introductory.** — Although the *power* of our national executive belongs almost exclusively to the President, the *administration* of its business remains with the different *executive departments*. At present there are nine of these — the Department of State, the Treasury, War, Navy, Post Office, Interior, Justice, Agriculture, and Commerce. The heads of these departments, usually called secretaries,<sup>1</sup> are selected by the President and are personally responsible to him. Collectively, they form an advisory body called the *Cabinet*, which assists him in forming and executing any policy in which the entire Administration is interested. All questions of moment are discussed in Cabinet meetings, held at the White House twice a week, but the President is in no wise bound to follow the advice of his Cabinet, and may act in opposition to the wishes of all the secretaries. Much more frequently, of course, the President and his associates hold identical views upon public questions, yet we must not forget that in the last analysis *the policy of an Administration is the policy of the President* and not that of the Cabinet.

Selection of Cabinet officers.

Formerly, unsuccessful candidates for the presidency were often chosen for Cabinet positions. *E.g.* President Lincoln appointed William H. Seward, Salmon P. Chase, and Simon Cameron, all of whom had been political rivals, to the three most important positions in his Cabinet. This custom has fallen into disuse, and recent Presidents have usually selected business men for the business departments, and promi-

<sup>1</sup> The heads of the Departments of Justice and the Post Office are known as the Attorney-general and the Postmaster-general.



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PRESIDENT TAFT AND HIS CABINET



nent lawyers, who may have taken no active part in politics, for the other positions. The newer practice has given satisfaction, for the administrative work of the executive departments was never more effectively performed than it is to-day. For these positions, the compensation is inadequate, being but \$12,000 per year.

**331. Executive and Legislative.** — In considering the powers of Congress, we noticed how closely the administration of law is related to legislation.<sup>1</sup> In fact, a task which in one case is performed by Congress may be left in another to Cabinet officers, who prescribe the work to be done and the methods to be employed. This *interrelation of legislative and executive duties* has produced in England and some other European countries a more or less complete union of these branches of government. In Great Britain, for example, the executive department is the Cabinet, which is in reality a committee of Parliament. This Cabinet not only carries out the laws passed by Parliament, but it *introduces* all important bills. Moreover, when its policy is no longer approved by the House of Commons, the more powerful chamber, the Cabinet is obliged to *resign* or call a *new election* for members of Parliament. This system insures *responsibility* and prevents unnecessary friction between the legislative and executive departments. For these reasons it has been highly recommended as suitable for this country, although our preference for a separation of the three great departments of government makes its adoption unlikely, and, in the opinion of most statesmen and students, unwise. The very *separation* of the departments is usually considered one of the wisest political devices adopted by our forefathers, and, although it has given us perhaps a less efficient government than that of England, it has probably been the safest and most satisfactory government we could have had.

Relation of  
their duties.

Ashley, *Am.  
Fed. State*,  
§§ 389-395.

Union of the  
two in Great  
Britain.

Moran, *Eng.  
Gov't*,  
119-154.

**332. Congress and the Executive Departments.** — The actual working relations of Congress and the departments are

Control of  
Congress  
over depart-  
ments.

<sup>1</sup> Consult especially §§ 233, 238, 243-245, 267, 275-279.

Bryce, *Am. Commonwealth*,  
abr. ed.,  
156-159.

comparatively simple and satisfactory. Congress *organizes* and has general oversight of the departments and their bureaus, while the secretaries are given a considerable amount of *discretion* in applying the laws whose administration belongs to them. Congress may hamper the work of any department, however, by a failure to make needed reforms or vote sufficient money. In each house there are appropriation committees whose especial duty is to examine the estimates sent in by the departments which they supervise. These committees, in a sense, form a connecting link between the departments and Congress. To a large degree, harmonious relations between the houses and the executive officials depend upon them, for they may prevent successful administration or required improvements.

Influence  
of secre-  
taries over  
Congress.

The secretaries can influence Congress through their annual reports, and by personal appeals to leaders and to the chairmen of the committees which look after their departments. It has been proposed that members of the Cabinet should have seats in Congress with the right of speaking though not of voting, but the suggestion has not met with favor. Nevertheless, the heads of the executive departments have exerted a marked influence upon the important laws relating to their departments. For instance, during recent years the Secretary of War has been able to obtain colonial and military legislation that has followed the suggestions of his annual report to quite an extent, and the Secretary of the Treasury has many times possessed a similar influence (§ 336).

General.

**333. Discretionary Power of the Secretaries.**—A great deal of discretion is permitted by Congress or is exercised by a determined secretary in administering the work assigned to his department. This is due to the importance of the tasks performed by the heads of departments rather than the willingness of Congress to give the secretaries a free hand, for our scheme of government has been designed from colonial days to prevent the exercise of arbitrary power by



any executive official. This idea has been carried so far that even the President would have been hampered in the exercise of his powers, were his duties not of such a character that he is really a ruler and not simply a figure-head.

The Department of *State* offers the best example of discretionary power exercised by a secretary, for Congress has no control over diplomatic relations, and the President, by custom, usually leaves the negotiation of treaties and other foreign affairs wholly to the Secretary of State. The same is true of the Secretaries of *War* and the *Navy* in time of war. Although Congress declares war and raises armies after war has been declared, the Secretaries control the movements of the military and naval forces, even when Congress objects to the war policy that is followed. Many historical examples of the great discretionary power of the Secretary of the *Treasury* might be cited, from the days when Secretary Hamilton in 1790 formulated and secured a financial policy for the new republic to recent years in which secretaries have decided questions of vast magnitude in determining whether bonds or notes redeemable in "coin" should be paid in gold or silver. The Secretary of the *Interior* has wielded vast power in deciding land questions involving millions of dollars, in selecting forest reserves<sup>1</sup> (§ 278) or sites for the huge dams constructed by the reclamation department (§ 277). The work of the Secretaries of *Agriculture* and the *Postmaster-general* necessarily involves discretion (§§ 280-289). In coöperation with the President the secretaries may even carry into effect a policy that is opposed by Congress.

Powers exercised by different secretaries or subordinates.

**334. The President and the Heads of Departments.**— The control of most of the administrative duties belonging to each department is of necessity left entirely with its secretary, because such duties deal largely with matters of detail.

Action on important and unimportant subjects.

<sup>1</sup> This power has since 1907 been reserved by Congress for itself. It was exercised before that time chiefly by the chief forester.

Harrison,  
*This Country of Ours*,  
107.

The President naturally insists that his wishes shall be followed in regard to all subjects of importance, in order to preserve the unity of action necessary to a successful administration of public affairs. In minor matters, if there is any difference of opinion, he is likely to yield to the preference of the secretary. "The habit is to give an afternoon to each Cabinet officer on a fixed day of the week. These meetings are mainly given up to the consideration of appointments, but, if any other matters are pending, and deemed by the secretary of sufficient importance, they are presented and discussed. The Cabinet officer is chiefly entitled to the credit if his department is well administered, for most things he transacts on his own responsibility. His labors are incessant and full of care."<sup>1</sup>

The departments were organized in the following order:—

The Department of State, July 27, 1789;

The War Department, Aug. 7, 1789;

The Department of the Treasury, Sept. 2, 1789;

The Post Office Department, May 8, 1794;

The Navy Department, April 30, 1798;

The Interior Department, March 3, 1849;

The Department of Justice, June 22, 1870;<sup>2</sup>

The Department of Agriculture, Feb. 9, 1889;

The Department of Commerce and Labor, Feb. 14, 1903.

### THE DIFFERENT DEPARTMENTS<sup>3</sup>

Foreign  
affairs and  
domestic  
duties.

**335. The Duties of the Secretary of State.**—The Secretary of State occupies a position of especial honor as the chief secretary and as the member of the Cabinet who

<sup>1</sup> Harrison, *This Country of Ours*, 107.

<sup>2</sup> There has been an Attorney-general since 1789.

<sup>3</sup> In order to understand and fully appreciate the important work done by the different executive departments, we should review all sections in other parts of the book where various administrative duties have been described. These have been considered in other connections in order to treat the whole of one subject in one place, so far as possible.

The pupil should study the organization of the different departments and compare the coördination of business in the Treasury Department, for example, with the lack of coöperation in the Navy Department. For

comes first in the succession to the presidency. His principal duties relate to the negotiation of *treaties* (§ 228), which are left almost exclusively in his charge. His foreign policy is likely to become that of the President, and the success of the government in its dealings with other nations depends to a large degree upon his wisdom and skill. Newly appointed *foreign representatives* are met by the Secretary of State and presented by him to the President, all business with them being done through him (§ 230). But his time and that of his associates is devoted to many matters of routine. The entire *consular system* (§ 235) is under his supervision. He is intrusted with the keeping of the laws of the United States, sending certified copies of all, as they are enacted, to the governors of the States. He affixes the great seal to civil commissions of officers appointed by the President, issues *proclamations* when amendments to the Constitution are adopted, and often drafts the Thanksgiving proclamation and other proclamations made by the President.



SEAL OF THE UNITED STATES

**336. The Secretary of the Treasury**<sup>1</sup> has exercised an influence second to that of no other Cabinet officer. His public duties are not only numerous but important, and so high has been the standing of the men who have held the position, that *suggestions made by the secretaries have usually been followed by Congress*. The financial policy of the United States was, in fact, proposed, and has been perfected by these

lists of the bureaus and the duties performed by each, consult the *Congressional Directory*.

<sup>1</sup> The erection of all public buildings not connected with the military or naval service is under the charge of the Supervising Architect, an official of the Treasury Department.

Fairlie, *Nat. Administration*, 77-91.

Harrison, *This Country of Ours*, 181-201.

Political influence.

Harrison, *This Country of Ours*, 202-229.

leaders rather than by congressmen. During Washington's administration, Secretary Hamilton's suggestion regarding the different sources of revenue and the methods to be used in collecting or disbursing money, were accepted with comparatively little change. While no later secretary has so completely molded Congress to his own views, many have been able to carry out their plans, as in the creation of a national banking system (§ 257).

Discretionary power.

The discretion which a secretary is allowed to use in the *management of the finances* gives him a considerable degree of authority. He has charge of the collection and disbursement of more than a billion dollars a year, and is able to decide the amount of money that shall be coined from different metals unless the laws are specific. He may also influence Congress greatly at present through the suggestions made in his *annual report* for the improvement of the revenue system, the support of the public credit, or the adoption of more satisfactory methods. This influence is increased through the letter which he submits to Congress (§ 250), giving his estimate of the receipts and expenditures for the following year.

Important duties of the Secretary.

Harrison, *This Country of Ours*, 269-288.

Gauss, *Am. Gov't*, 153-158.

**337. The Interior Department.**—"The Interior Department is now, in the variety and importance of the business committed to it, one of the greatest of the executive departments. Perhaps no one of the secretaries, unless it be the Secretary of the Treasury, is so pressed and cumbered with business as the Secretary of the Interior. *His work is not single*, as in most of the departments, *but diverse and multifarious*; and only a strong and versatile man can conduct it successfully. The Secretary must pass finally in the department upon questions of patent law, pension law, land law, mining law, the construction of Indian treaties, and many other questions calling for legal knowledge, if the judgment of the Secretary is to be of any value. There is an assistant attorney-general assigned to the department, and the Secretary may call upon the Attorney-general for his opinion

upon important matters, but there is hardly an hour in the day that does not present some legal question, and very often the Secretary must sit as an appellate judge, hear arguments, and render decisions."

As all matters pertaining to education are left with the States, the Commissioner of *Education* confines his labors to the gathering of statistical information, the making of reports, and suggestions. His principal aim is to bring about uniformity of the highest degree in the schools of the land. The Commissioner of *Pensions* supervises the administration of the pension laws (§ 242), and examines and passes upon all applications made by claimants for pensions. All interests of the government relating to transcontinental railways are in charge of the Commissioner of *Railways*. The Director of the *Geological Survey* investigates and reports upon the character and natural resources of soils within the United States. The administration of the land laws, including surveys of the public domain, and the distribution of farms to settlers under the Homestead Act (§§ 275-276) is left with the Commissioner of the *General Land Office*. The *Reclamation service* selects areas to be reclaimed, and constructs dams to hold the water used for irrigation projects (§ 277). The very great task of examining all applications for patents (§ 293) is performed under the direction of the Commissioner of *Patents*, and all *Indian affairs* (§ 292) are supervised by the Indian Commissioner.

**338. The Secretary of War,**<sup>1</sup> although not often a military officer, is the real commander of the army, supervising its organization, equipment, and movements. In this work he acts for the President, who is commander-in-chief, and he is aided by several officers, who, collectively, with the commanding general of the army, form the *General Staff* (§ 238). To the Quartermaster General is assigned the purchase of most army supplies, except the food, which is under the charge of the Commissary General, and the arms, artillery, and munitions of war, which are left to the Chief of Ordnance. Other chiefs of bureaus are the Adjutant General, who promulgates all military orders; the Judge-advocate General, who is the legal adviser of the Secretary; the Inspector General; the Surveyor General; the Paymaster General; the Chief of Engineers, and the Chief Signal Officer. The principal

Number and duties of bureaus.

Harrison, *This Country of Ours*, 270-288.

Fairlie, *Nat. Administration*, 188-219.

Duties of the Secretary and his assistants.

Harrison, *This Country of Ours*, 221-230.

Carter, W. H., in *Scribner's*, 33 (1903), 661-673.

<sup>1</sup> The Secretary has control of all contracts for arsenals, forts, breakwaters and other harbor defenses and improvements. All buildings and places belonging to the national government are exempt from state and local taxation, but are under state police protection. See Hart, *Actual Government*, §§ 152, 163.

cares of the department are the army and the coast defense. The West Point Military Academy is also in its charge. (§§ 238-241.) In the performance of actual duties, whether in time of peace or of war, the Secretary usually acts upon his own responsibility except in the most important matters.<sup>1</sup>

Work of the  
Navy  
Depart-  
ment.

Mahan,  
A. T., in  
*Scribner's*,  
33 (1903),  
567-577.

Marvin, W.  
L., in *Rev.*  
*of Revs.*,  
36 (1907),  
714-722.

Duties of  
Attorney-  
general and  
assistants.

Fairlie, *Nat.*  
*Adminis-*  
*tration*,  
165-175.

Hoyt, H. M.,  
in *Harper's*  
*Weekly*,  
49 (1905),  
312-314.

Various  
bureaus.

**339. The Secretary of the Navy** bears much the same relation to the President as does the Secretary of War, being in fact as well as in theory the head of his department. He is assisted by a *General Board*, which corresponds in part to the General Staff, although less perfectly organized at the present time (1908). Perhaps the most important of the bureaus is that of *Construction and Repair*, which is wholly responsible for the plans of any vessel and the stability of all vessels built under its directions. The number and size of the guns a warship shall carry and the thickness of the armor for the turrets and exposed parts of the hulls are determined by the Bureau of Ordnance in coöperation with that of Construction and Repair. Each of the other bureaus has a very important and valuable work, though of less general interest. The department has charge of a naval observatory at Washington and of the Annapolis Academy (§ 240).

**340. The Department of Justice** was not organized as a separate department until 1870, although the Attorney-general has always been a Cabinet officer. The direct duties of the Attorney-general and his subordinates are to *advise the President and the executive officials* regarding legal questions that arise, supervise the actions of the district attorneys and marshals (§ 346), and conduct suits to which the United States is a party when tried in the higher courts. Special assistants have taken charge of the large number of prosecutions made by the government against monopolistic corporations. Two solicitors advise the officials of the Treasury in connection with the questions involved in the collection of the customs and internal revenue, another is consulted by the Department of State upon difficult points of international law. Two of the assistant attorney-generals devote all their time to legal questions connected with the Post Office and Interior Departments, the others and the Solicitor General being concerned with more general duties.

**341. The Department of Commerce** is composed of a large number of bureaus formerly connected with other departments, especially the Treasury. Among other duties, the heads of these bureaus have

<sup>1</sup> When large areas within the United States or belonging to it are under military government, as was the case immediately after the Civil War and the Spanish-American War, the Secretary becomes an administrative official of very great influence.

charge of the lighthouses and life-saving stations, the survey and inspection of the coasts, the development of a supply of fish, and the publication of statistics, in the form of consular reports and statistical abstracts.

Fairlie, *Nat. Administration*, 230-247.

The Bureau of *Labor* gathers information from all parts of the country on the hours of labor, the wages paid in different lines of employment, and the general labor conditions in various sections. Corporations which do interstate business are investigated by the Bureau of *Corporations*, which has the right to publish any information obtained (§ 264). The aim of the Bureau of *Manufactures* is to aid American manufacturing industries, especially through the development of foreign and domestic markets, by gathering and publishing information, and "by such other methods and means as may be prescribed by the Secretary, or provided by law."

Bureaus of Labor, Corporations, and Manufactures.

*Rev. of Revs.*, 35 (1907), 420-427.

The chief task of the *Census Bureau* consists in gathering, compiling, and publishing every ten years, and in some instances every five years, statistics upon population, agriculture, vital statistics, and manufactures. This work must be completed within two years. The remaining eight years are devoted to collecting information on special classes, taxation, transportation, and other subjects. The forces employed in the Census Bureau vary greatly. During June of the census year proper, nearly 50,000 enumerations are engaged under the direction of about 300 supervisors, who have charge of districts covering, on the average, the same area as a congressional district. Many expert accountants are occupied permanently with the publication of the reports at Washington.

Census Bureau.

Merriam, W.R., in *No. Am. Rev.*, 170 (1900), 99-108.

**342. Other Departments or Commissions.**—The work of the **Post Office Department** was explained rather fully in §§ 280-283. The **Department of Agriculture** is carried on through the bureaus of soils (§ 285), plant industry, and experiment stations (§ 286), those of animal industry (§ 287), and chemistry (§ 288), through the weather bureau (§ 289), the forest service (§ 278), and public roads (§ 138).

Post office. Department of Agriculture.

In addition to these nine departments, there are commissions which are not connected with any department. These are the *Interstate Commerce Commission* (§ 262), the *Civil Service Commission* (§ 44), the *Smithsonian Institution*, and the *International Bureau of American Republics*. A very useful work is performed by the Congressional Library (§ 293), and by the *Public Printing Office*. In the latter, nearly 5000 persons are employed, making it perhaps the most extensive publishing plant in the world.

Miscellaneous commissions.

Before 1860, the printing of government publications was done by

Work of  
the Public  
Printing  
Office.

Whelpley,  
J. D., in *Rev.  
of Revs.*,  
28 (1903),  
556-563.

private parties or contracts. With the establishment of a printing office of its own, the government has increased very greatly the number of its publications. In 1902, 61,240,718 copies of separate documents were published. Among the notable publications of the past are the *Official Records of the War of the Rebellion*, in more than 100 volumes, undoubtedly the largest set of works ever published, explorations in the South Seas and the West, the various reports of the Geological Surveys, and the volumes on the censuses, that of the eleventh census covering 29 quarto volumes. Each year the office prints not only the records of Congress, but more than 100 separate reports of the executive departments and their bureaus. Of the *Year Book of the Department of Agriculture* alone, 500,000 copies are published.

### General References

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 Lamphere, *The United States Government*, pp. 53-269.  
*Official Congressional Directory* under "Official Duties" of Departments.  
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2. THE ADVANTAGES OF PRESIDENTIAL GOVERNMENT: SNOW, "Cabinet Government in the United States," in *Annals of the American Academy of Political and Social Science*, 3 (1892), 1-13, and in *American Historical Association*, 4 (1890); McConachie, *Congressional Committees*, pp. 211-258; Lowell, "Cabinet Responsibility," in his *Essays on Government*; and Freeman, "Presidential Government," in *National Review*, 19 (1864), 1 *et seq.*

3. THE ACTUAL WORKING RELATIONS OF THE DEPARTMENTS OF OUR NATIONAL GOVERNMENT: Ashley, *American Federal State*, §§ 396-406; Bryce, *The American Commonwealth*, abridged ed., pp. 155-166; Johnston, A., in Lator's *Cyclopedia*, II, pp. 133-134.



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## CHAPTER XXVII

### THE NATIONAL JUDICIARY

Final inter-  
preter of the  
Constitu-  
tion.

Cooley,  
(ed.),  
*Const'l Hist.*  
*as seen in*  
*Const'l*  
*Law*, 30-43.

**343. The Work of the Judicial Department.**—Our national courts have jurisdiction of all cases arising under the Constitution, the national laws, or treaties. For this reason, the *Supreme Court is the final interpreter of the Constitution of the United States*; that is, it decides what the meaning of any particular clause or section may be. The significance of the statement may not be at once apparent. We must remember that our national government derives its authority from the people through the Constitution and the Constitution alone. The Constitution enumerates the general powers to be exercised by the national government, and, in doing this, separates the sphere of the States (§ 215) from that of the Nation (§ 195). The boundary line between these two spheres of activity is of necessity somewhat indefinite, but as final interpreter of the Constitution, *the Supreme Court has the power to determine the exact location of this line* in regard to any subject brought before it. Moreover, it may permit the national government to use "implied powers," which supplement those enumerated in the Constitution, but which do not infringe upon the rights of the State.

Through the  
trial of  
cases only.

Hart, *Actual*  
*Gov't*, § 145.

**344. How the Courts interpret the Constitution.**—The courts do not decide the meaning of a section of the Constitution by offering opinions at any time, but interpret the Constitution solely in connection with their regular work as courts. When a person feels that he is injured in the execution of a law, his case is brought before a court for trial,



THE SUPREME COURT CHAMBER



THE STATE, WAR, AND NAVY BUILDING



and if the meaning of any clause of the Constitution is involved, the court explains the meaning of the clause when it gives its decision in the case. It really decides whether laws passed by Congress are *constitutional* or not. If, in its opinion, the Congress had a right to pass the law with which the case is concerned, the law is declared constitutional. If Congress has exceeded its powers, the law is set aside as null and void. The Supreme Court, to which cases involving the Constitution are appealed, is thus enabled on the one hand to extend the power of Congress within reasonable limits, and to prevent that body from usurping the functions of the other departments of the national government and of the States.

In deciding whether a law is adverse to the Constitution, the courts are accustomed to observe certain rules and customs. Among these may be mentioned: (1) No important case involving the Constitution is considered except by a full court. (2) No law is declared unconstitutional unless it is clearly in opposition to the Constitution. (3) To find the meaning of a particular clause, the meaning of the Constitution as a whole is usually taken into consideration. (4) Laws which violate general principles of liberty are not on that account declared null and void. (5) Statutes may be held to be unconstitutional in part, the validity of the remainder being affirmed.

Cases involving the Constitution.

Cooley, *Const'l Law*, 151-162.

**345. The Relation of National to State Courts.**—All cases involving state law only are always tried in state tribunals. Cases involving national law are tried usually in national courts, but those dealing with a few subjects, such as postal matters, may be tried in either state courts or those of the Nation, as the plaintiff may prefer. In these cases the final decision rests with the highest national court. By far the larger number of cases of this kind, which are begun in state courts, deal with state laws supposed to involve the United States Constitution or laws. If the state court decides that the state law is in *opposition* to national law, its decision is final. If it thinks there is *no conflict* between the two and that therefore the state law is valid, the

Concurrent jurisdiction.

Cooley, *Const'l Law*, 127-133.

Cases that may be appealed.

Baldwin,  
*Am. Judiciary*, 152-  
173.

case must be carried to the Supreme Court of the United States. In fact, in all instances, we may say that when a State decides in favor of the United States laws or Constitution, its decision does not need to be reviewed by the Supreme Court. In this respect, the state courts have been made real parts of the national judiciary, a fact which illustrates the real unity of the national and state systems of government (§§ 219-221).

Four series  
of courts.

*Constitu-  
tion*,  
Art. III, § 1.

Term  
appoint-  
ment, and  
salaries of  
judges.

Hart, *Actual  
Gov't*, § 137.

**346. National Courts: Judges and Jurisdiction.** — According to the Constitution there shall be one Supreme Court and as many inferior courts as Congress may establish. At present there are four series of courts — the *Supreme Court*, which always meets in Washington, nine *Circuit Courts of Appeals*, nine *Circuit Courts* with twenty-nine judges, and ninety-two *District Courts*.

The judges of all these courts are appointed for good behavior by the President with the consent of the Senate. They may be removed only on impeachment in the House of Representatives and conviction by two thirds of the senators. For their services they are paid small salaries which may be increased, but not diminished, during their term of office.<sup>1</sup> Those who have served at least ten years are permitted to retire at the age of seventy, and continue to draw full pay. Because of the honor connected with a judgeship, our national judges have been men of exceptional ability, and our Supreme Court especially has enjoyed a world-wide reputation for wisdom and impartiality.

Jurisdic-  
tion.

*Constitu-  
tion*, Art. III,  
§ 2, cl. 1.

The Constitution provides for the different kinds of cases that may be tried in United States courts. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdic-

<sup>1</sup> By a bill approved in February, 1903, the salary of the Chief Justice is fixed at \$13,000 per year, that of the associate justices at \$12,500, of the circuit judges at \$7000, and of the district judges at \$6000 each.

tion ;—to controversies to which the United States shall be a party ;—to controversies between two or more States ;—between a State and citizens of another State ;—between citizens of different States ;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.”

Harrison,  
*This Country of Ours*,  
303-315.

**347. The Supreme Court.**—The Supreme Court consists of one chief justice and eight associate justices,<sup>1</sup> appointed by the President for life. The court holds its *regular session in Washington*,<sup>2</sup> beginning in October, and the presence of six justices is necessary before a decision is rendered. These decisions are written by the different judges to whom particular cases are assigned by the chief justice after discussion by the different members of the court. The opinion is then read in the presence of the others, a vote is taken, and, if accepted by the majority, it becomes the decision of the court. Dissenting opinions are often given by the minority in suits involving important principles.

Organiza-  
tion.

Harrison,  
*This Country of Ours*,  
314-325.

In 1908 the court was composed as follows :—

JUSTICE	CIRCUIT	APPOINTED
Chief Justice Melville W. Fuller (Ill.) . . .	Fourth	1888
Associate Justice John M. Harlan (Ky.) . .	Sixth	1877
Associate Justice David J. Brewer (Kan.) . .	Eighth	1889
Associate Justice Edward D. White (La.) . .	Fifth	1894
Associate Justice Rufus W. Peckham (N.Y.) .	Second	1895
Associate Justice Joseph McKenna (Cal.) . .	Ninth	1898
Associate Justice Oliver W. Holmes (Mass.) .	First	1902
Associate Justice William R. Day (Ohio) . .	Third	1903
Associate Justice William Moody (Mass.) . .	Seventh	1906

The jurisdiction of the Supreme Court is of two kinds, *original* and *appellate*. The cases which may be tried originally in the Supreme

Original  
and  
appellate  
jurisdiction

<sup>1</sup> Until 1807 the court had but five associate justices. From 1807 to 1837 the number was six; after 1837, eight. In 1863 it was increased to nine; but in 1866, in order to prevent President Johnson from making appointments, it was practically reduced to six. Since 1869 there have been eight associates of the chief justice.

<sup>2</sup> Each justice of the Supreme Court is also assigned to a particular circuit, in which he is obliged by law to hold court at least once in two years. He is likely to be called upon for service in the Circuit Court of Appeals in his circuit, so his position is no sinecure.

Court are those "affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party." The appellate jurisdiction of the court may extend to all other cases, but to do this would lead to a needless increase of its business. Cases which are now appealed may be divided into three classes, according to the courts from which appealed.

Circuit  
Courts of  
Appeals.

Gauss, *Am.*  
*Gov't*,  
224-226.

**348. Inferior Courts.**<sup>1</sup>—The Circuit Courts of Appeals were created in 1891 for the purpose of relieving the Supreme Court of most of its appellate business. There are as many courts as there are circuits; that is, nine, and each is composed of three persons, the Supreme Court justice of that circuit and two of the regular circuit judges, or possibly district judges. Any two of these may hold court at any time, but the places are designated by law. All cases appealed from the district or circuit courts, and not taken directly to the Supreme Court, are reviewed in these courts. The decision of the courts is *final* in some of these cases, as in those involving criminal, admiralty, revenue, and patent law, but in all others the case may be carried to the Supreme Court, either by appeal or on writ of error.<sup>2</sup>

Circuit  
Courts.

Gauss, *Am.*  
*Gov't*,  
201-213.

For each of the nine circuits either two, three, or four circuit judges are appointed who may hold court separately or together. Before 1891 the courts possessed both original and appellate jurisdiction, but by the judiciary law of that year, when the whole system was reorganized, only *original* jurisdiction was left. Important civil suits involving two thousand dollars or more which arise under the Constitution, the statutes, or the treaties, or which involve the United States, any State, or citizens of different States, as well as criminal cases of magnitude, are first tried in these courts, but may be appealed to one of the higher courts.

District  
Courts.

Gauss, *Am.*  
*Gov't*,  
184-189.

There are at present ninety-two District Courts in the United States. To each of the districts is assigned a *district attorney*, who represents the United States in all suits arising in the United States courts held in his district, and a *marshal*, who executes the decisions of the court and who may call out a posse or ask aid from the President in performance of his duties. The jurisdiction of the court is

<sup>1</sup> A court of Claims tries cases of claims brought against the national government. See Gauss, *American Government*, 227-232.

<sup>2</sup> There has already been some complaint that different suits involving similar principles, which cannot be carried higher may be decided in one way by one Circuit Court of Appeals and in another way by another, so that what is legal in one circuit is illegal in a second. To remedy this difficulty, a single court has been suggested to which appeal may be taken in such cases.



*original*, and covers a multitude of cases from those of minor importance to the final decision of prize causes.

**349. Conclusion.**—It is fitting that a text-book upon American government should be concluded with an account of our national judiciary. Among our successful political institutions, the most conspicuous is the system of United States courts, which has been the special guardian of the Constitution. The Supreme Court, at the apex of this system, represents the highest type of political evolution. A model of fairness, wisdom, and integrity, it is respected at home and honored throughout the entire world. It is a witness to the honesty, earnestness, and intelligence of the American people whom it serves and a proof that government “of the people, by the people, and for the people shall not perish from the earth.” To its high standard our other governments may be unable to attain, but it will continue to be their model, and its standard will remain the ideal of the American citizen. Decade by decade it has developed in the people a more perfect type of public morality; and in the coming years, the lesson it has taught, that true patriotism is not selfish nor sectional, and that national success must depend upon our recognition of the eternal principles of Justice, will bring the Nation to a higher level of civic righteousness. Then, with even greater pride than we feel to-day, may each one of us utter our proud boast — “I AM AN AMERICAN CITIZEN.”

#### General References

- Ashley, *The American Federal State*, §§ 374–388.  
Hinsdale, *The American Government*, §§ 525–545, 570–577.  
Bryce, *The American Commonwealth*, abridged ed., pp. 167–200.  
Hart, *Actual Government*, pp. 295–319.  
Harrison, *This Country of Ours*, pp. 300–330.  
Cooley, *Principles of Constitutional Law*, pp. 111–147.  
Willoughby, *The Supreme Court*.

### Topic

THE COURTS AND THE CONSTITUTION: Hinsdale, *American Government*, §§ 570-577; Bryce, *American Commonwealth*, abridged ed., pp. 178-187; Johnson, A., in *Lalor's Cyclopaedia*, II, pp. 647-652; Brewer, D. J., "The Supreme Court," in *Scribner's Magazine*, 33 (1903), 273-284; Elliott, C. B., in *Political Science Quarterly*, 5 (1890), 224-258.

### Studies

1. General character of the national courts. Ashley, *American Federal State*, §§ 374-382, 404-406.
2. The workings of the courts. Bryce, *American Commonwealth*, abridged ed., pp. 188-200.
3. The Supreme Court and political questions. Harrison, *This Country of Ours*, pp. 303-313.
4. The influence of Chief Justice Marshall. Magruder, *Life of John Marshall*, Chapter X.
5. The influence of Supreme Court decisions (historical). Brewer, in *Scribner's Magazine*, 33 (1903), 275-283.
6. Should the national judges be elected for terms of a definite length?

### Questions

1. Name a fairly recent case in which a law of Congress was held by the Supreme Court to be unconstitutional. On what grounds? By what members of the court?
2. Why does not the Eleventh Amendment prohibit citizens from suing their own State? (Cf. Constitution, Art. III, § 2, cl. 1.)
3. In what circuit do we live? What States are included in it? Who is the Supreme Court justice for this circuit? What circuit judges are there?
4. What are the limits of this district? Where is the court held? Give the names of the district judge, the district attorney, and the marshal.

## APPENDIX

### A. CONSTITUTION OF THE UNITED STATES

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

PREAM-  
BLE. Ob-  
jects of the  
Constitu-  
tion.

#### ARTICLE. I.

*Section 1.* All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

CONGRESS.  
Two  
houses.

*Section 2.* [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

*House of  
Represent-  
atives.*  
Term and  
election.

[2] No Person shall be a Representative who shall not have attained to the age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Qualifica-  
tions—  
age, citi-  
zenship,  
residence.

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall

Method of  
apportion-  
ing repre-  
sentatives.  
(Part in  
brackets  
super-  
seded by  
Sec. 2 of  
Amend-  
ment  
XIV.)  
Census.

**Temporary apportionment.**

not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

**Vacancies.**

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

**Officers.**

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

**Senate. Election and term.**

*Section 3.* [1] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

**Division of Senators into three classes.**

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

**Vacancies.****Qualifications — age, citizenship, residence. Vice-president.**

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

**Officers.**

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

**Trial of impeachments.**

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried,

the Chief Justice shall preside : And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States : but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Judgment  
in cases of  
impeach-  
ment.

*Section 4.* [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof ; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

*Both  
Houses.*  
Times,  
places, and  
method of  
electing  
members.  
Time of  
meeting.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

*Section 5.* [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business ; but a smaller Number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Member-  
ship regu-  
lations.  
Quorum.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Rules of  
each  
house.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy ; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Journals.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Special  
adjourn-  
ments.

*Section 6.* [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same ; and for

*Members.*  
Compen-  
sation and  
privileges  
of mem-  
bers.

any Speech or Debate in either House, they shall not be questioned in any other Place.

Disabilities of members.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Bills and resolutions.

Revenue bills.

Veto of President on bills.

*Section 7.* [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Veto on resolutions.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Powers of Congress.

*Section 8.* The Congress shall have Power [1] To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and

- provide for the common Defence and general Welfare of the United States; but all duties, Imposts and Excises shall be uniform throughout the United States;
- [2] To borrow Money on the credit of the United States;
- [3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- [4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
- [5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
- [6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
- [7] To establish Post Offices and post Roads;
- [8] To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
- [9] To constitute Tribunals inferior to the supreme Court;
- [10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;
- [11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
- [12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
- [13] To provide and maintain a Navy;
- [14] To make Rules for the Government and Regulation of the land and naval Forces;
- [15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
- [16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.
- [17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the

Taxation.

Borrowing.

Regulating commerce

Naturalization and bankruptcy.

Coins, weights, and measures.

Counterfeiting.

Post offices.

Patents and copyrights.

Inferior courts.

Piracies. War.

Army.

Navy.

Land and naval forces.

Militia, in service.

Militia, organization.

Seat of government, and stations.

Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;— And

Supple-  
mentary  
legisla-  
tion.

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Limita-  
tions on  
powers of  
Congress.

*Section 9.* [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Slave  
trade.

Habeas  
corpus.  
Bills of  
attainder  
and ex  
post facto  
laws.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Direct tax.

[3] No Bill of Attainder or ex post facto Law shall be passed.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.

Tax on  
exports.

[5] No Tax or Duty shall be laid on Articles exported from any State.

Uniform  
commer-  
cial regu-  
lations.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Finance.

[7] No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Titles of  
nobility  
and  
presents.

[8] No title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Limita-  
tions on  
powers of  
States.

*Section 10.* [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin



Money; emit Bills of Credit, make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts, or grant any Title of Nobility.

Specific prohibitions.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Limitations on imposts.

[3] No State shall, without the Consent of Congress, lay any Duty of tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Prohibitions removable with consent of Congress.

## ARTICLE. II.

*Section 1.* [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same term, be elected, as follows:

PRESIDENT. Term. Presidential electors and method of choosing President.

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. [The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than

(Part in brackets superseded by XII amendment.)

one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

Dates of elections.

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Qualifications, citizenship, age, and residence.

[4] No Person except a natural born Citizen, or a citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Presidential succession.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Compensation.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Oath of office.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

*Section 2.* [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

*Powers of President.*

Military, super-  
visory, and  
judicial.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

In treaties  
and in  
appoint-  
ments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Tempo-  
rary  
appoint-  
ments.

*Section 3.* He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Legisla-  
tive  
powers.

*Section 4.* The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Liability  
to  
impeach-  
ment.

### ARTICLE. III.

*Section 1.* The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the

JUDICI-  
ARY.  
Courts.

Judges :  
term and  
compen-  
sation.

Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Jurisdic-  
tion.

*Section 2.* [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all cases affecting Ambassadors, other public Ministers and Consuls; — to all cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects.

Original  
and  
appellate  
jurisdic-  
tion of  
Supreme  
Court.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Jury trial.  
Place of  
trial.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Treason :  
definition,

*Section 3.* [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

punish-  
ment.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

NATION  
AND  
STATES.

#### ARTICLE. IV.

*Section 1.* Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every

other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. Interstate comity.

*Section 2.* [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. Interstate citizen-ship.

[2] A Person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime. Extradition of criminals.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due. Fugitive slaves.

*Section 3.* [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. Admission of new States.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State. Government of national territory.

*Section 4.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. Protection of States.

## ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes as Part of AMEND-  
MENT OF  
CONSTITU-  
TION.

this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## ARTICLE. VI.

MISCELLANEOUS.  
Preëxisting national debt.  
Supremacy of Constitution, treaties, and national law.  
Oaths of national and state officials.

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ARTICLE. VII.

RATIFICATION.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

*Done* in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth  
IN WITNESS whereof We have hereunto subscribed our Names,

G<sup>o</sup>. WASHINGTON—

Presidt. and Deputy from Virginia

[and thirty eight members from all the States except Rhode Island.]

ARTICLES IN ADDITION TO, AND AMENDMENT OF,  
THE CONSTITUTION OF THE UNITED STATES OF  
AMERICA, PROPOSED BY CONGRESS, AND RATIFIED  
BY THE LEGISLATURES OF THE SEVERAL STATES  
PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I<sup>1</sup>]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Prohibitions on Congress respecting religion, speech, and the press.

[ARTICLE II<sup>1</sup>]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Right to bear arms.

[ARTICLE III<sup>1</sup>]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Quartering of soldiers.

[ARTICLE IV<sup>1</sup>]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Right of search.

[ARTICLE V<sup>1</sup>]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand

Protection of accused in criminal cases.

<sup>1</sup> First ten amendments proposed by Congress, Sept. 25, 1789. Proclaimed to be in force Dec. 15, 1791.

Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### [ARTICLE VI<sup>1</sup>]

Rights of  
accused  
regarding  
trial.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

### [ARTICLE VII<sup>1</sup>]

Jury trial  
in law-  
suits.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

### [ARTICLE VIII<sup>1</sup>]

Bail and  
punish-  
ment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### [ARTICLE IX<sup>1</sup>]

Unenu-  
merated  
rights.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

### [ARTICLE X<sup>1</sup>]

Undelega-  
ted pow-  
ers.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

<sup>1</sup> First ten amendments proposed by Congress, Sept. 25, 1789. Proclaimed to be in force Dec. 15, 1791.



ARTICLE XI<sup>1</sup>

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Exemption of States from suit.

## ARTICLE XII

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two

New method of electing President.

(To supersede part of Art. II, Sec. I, cl. 2.)

(Proposed Dec. 12, 1803. Declared in force Sept. 25, 1804.)

<sup>1</sup> Proposed September 5, 1794. Declared in force January 8, 1798.

highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

### ARTICLE XIII

**Abolition of slavery.** *Section 1.* Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**(Proposed Feb. 1, 1865. Declared in force Dec. 18, 1865.)** *Section 2.* Congress shall have power to enforce this article by appropriate legislation.

### ARTICLE XIV

**Citizens of the United States — protection of.** *Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Declared in force July 28, 1868.)** *Section 2.* Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

*Section 3.* No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any

**New basis of representation in Congress.** (Superseding part of Art. I, sec. 2, cl. 3.)

office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by two-thirds vote of each House, remove such disability.

Disabilities of officials engaged in rebellion.

*Section 4.* The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Validity of war debt.

*Section 5.* The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## ARTICLE XV<sup>1</sup>

*Section 1.* The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

Voting rights of citizens of the U. S.

*Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

<sup>1</sup> Proposed February 27, 1869. Declared in force March 30, 1870.

## B. — AREA AND POPULATION OF THE STATES

State	Became Member of Union	Land Area Square Miles	Population		Electoral Vote	
			1890	1900	1892	1902
Alabama . . .	1819	52,250	1,513,017	1,828,697	11	11
Arkansas . . .	1836	53,850	1,128,179	1,311,564	8	9
California . . .	1850	158,360	1,208,130	1,485,053	9	10
Colorado . . .	1876	103,925	412,198	539,700	4	5
Connecticut . .	1788	4,990	746,258	908,355	6	7
Delaware . . .	1787	2,050	168,493	184,735	3	3
Florida . . . .	1845	58,680	391,422	528,542	4	5
Georgia . . . .	1788	59,475	1,837,353	2,216,331	13	13
Idaho . . . . .	1890	84,800	84,385	161,772	3	3
Illinois . . . .	1818	56,650	3,826,351	4,821,550	24	27
Indiana . . . .	1816	36,350	2,192,404	2,516,462	15	15
Iowa . . . . .	1846	56,025	1,911,896	2,231,853	13	13
Kansas . . . .	1861	82,080	1,427,096	1,470,495	10	10
Kentucky . . .	1792	40,400	1,858,635	2,147,174	13	13
Louisiana . . .	1812	48,720	1,118,587	1,381,625	8	9
Maine . . . . .	1820	33,040	661,086	694,466	6	6
Maryland . . .	1788	12,210	1,042,390	1,190,050	8	8
Massachusetts .	1788	8,315	2,238,943	2,805,346	15	16
Michigan . . . .	1837	48,915	2,093,889	2,420,982	14	14
Minnesota . . .	1858	83,365	1,301,826	1,751,394	9	11
Mississippi . . .	1817	46,810	1,289,600	1,551,270	9	10
Missouri . . . .	1821	69,415	2,679,184	3,106,665	17	18
Montana . . . .	1889	146,080	132,159	243,329	3	3
Nebraska . . . .	1867	77,510	1,058,910	1,068,539	8	8
Nevada . . . . .	1864	110,700	45,761	42,335	3	3
New Hampshire .	1788	9,305	376,530	411,588	4	4
New Jersey . . .	1787	7,815	1,444,933	1,883,669	10	12
New York . . . .	1788	49,170	5,997,853	7,268,012	36	39
North Carolina .	1789	52,250	1,617,947	1,893,810	11	11
North Dakota . .	1889	70,795	182,719	319,146	3	4
Ohio . . . . .	1803	41,060	3,672,316	4,157,545	23	23
Oklahoma . . . .	1908	70,430	242,016	790,205	—	5
Oregon . . . . .	1859	96,030	313,767	413,536	4	4
Pennsylvania . .	1787	45,215	5,258,014	6,302,115	32	34
Rhode Island . .	1790	1,250	345,506	428,556	4	4
South Carolina .	1788	30,570	1,151,149	1,340,316	9	9
South Dakota . .	1889	77,650	328,808	401,570	4	4
Tennessee . . . .	1796	42,050	1,767,518	2,020,616	12	12
Texas . . . . .	1845	265,780	2,235,523	3,048,710	15	18
Utah . . . . .	1896	84,970	207,905	276,749	—	3
Vermont . . . .	1791	9,565	332,422	343,641	4	4
Virginia . . . .	1788	42,450	1,655,980	1,854,184	12	12
Washington . . .	1889	69,180	349,390	518,103	4	5
West Virginia . .	1863	24,780	762,794	958,800	6	7
Wisconsin . . . .	1848	56,040	1,686,880	2,069,042	12	13
Wyoming . . . .	1890	97,890	60,705	92,531	3	3
Total States . .	—	2,855,107	62,358,827	75,400,728	444	481

Territory	Area Square Miles	Population	
		1890	1900
Alaska . . . . .	577,390	32,052	63,441
Arizona . . . . .	113,020	59,620	122,931
District of Columbia . .	70	230,392	278,718
Hawaii . . . . .	6,740	89,990	154,001
New Mexico . . . . .	122,580	153,593	195,310
Philippines . . . . .	114,000	—	6,961,339
Porto Rico . . . . .	3,600	—	953,243



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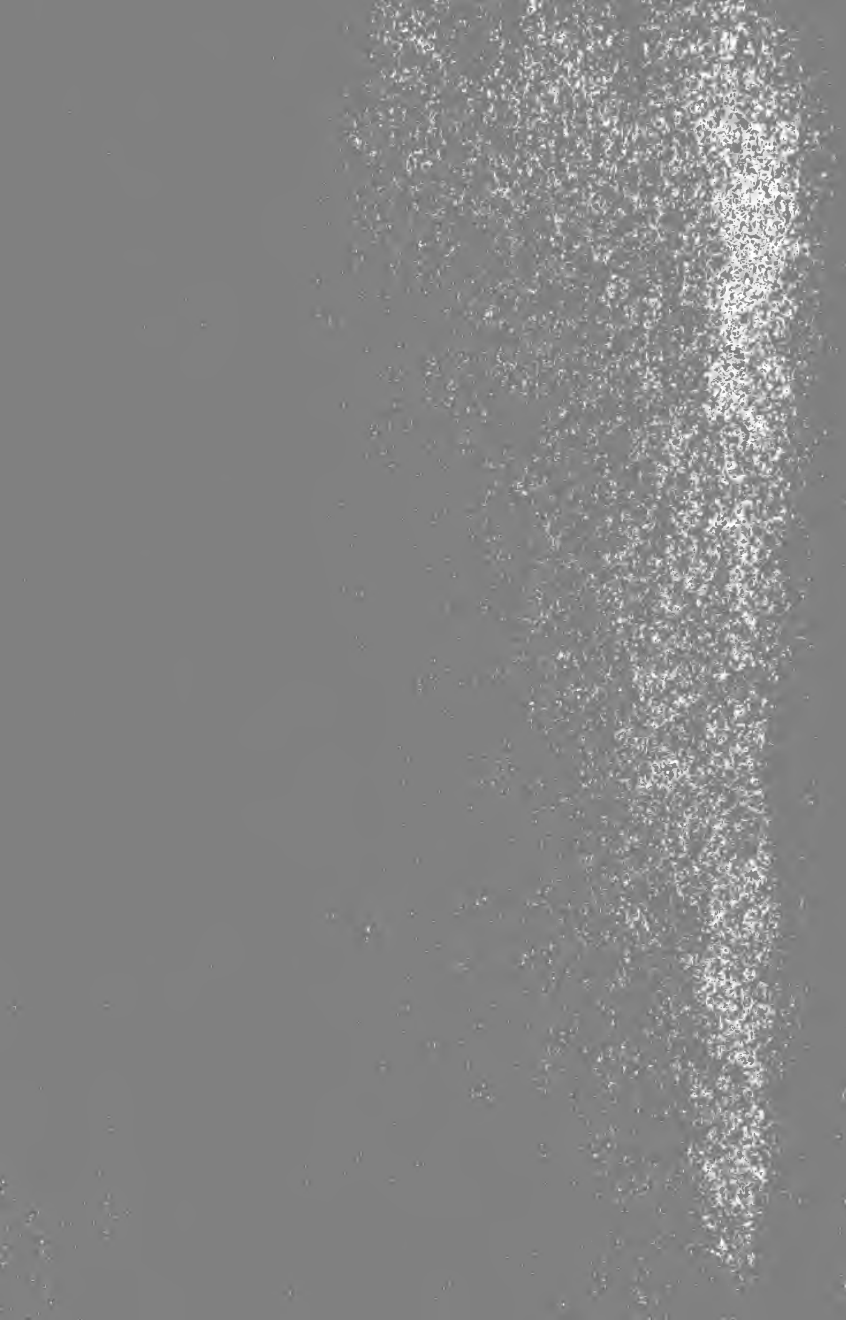
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